(18,766.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 178.

SAMUEL WRIGHT AND ESDRAS B. TRUBEY,
APPELLANTS,

vs.

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY
OF ST. PAUL, MINNESOTA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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1 UNITED STATES OF AMERICA:

J. C. IVERSEN and SAMUEL WRIGHT, Complainants,
vs.
MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, Formerly the Bankers Life Association of Minnesota, Defendants.

Pleas before the honorable the judges of the circuit court of the United States of America for the third division of the district of Minnesota, of the June term of said court, held in the city of St. Paul, in said district, in the year of our Lord one thousand nine hundred and two (1902).

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on the 4th day of August, A. D. 1902, came the complainants above named by their solicitors and filed in the clerk's office of said court their record for hearing in equity in words and figures following, to wit:

1½ (Endorsed:) Complainant's record. Filed August 4th 1902 Henry D. Lang, clerk, by Louise B. Trott, deputy.

In the Circuit Court of the United States of America for the District of Minnesota, in the —— Term, A. D. 1901.

J. C. IVERSEN and SAMUEL WRIGHT, Plaintiffs,
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance — of St. Paul, Minnesota, Formerly the Bankers Life Association of Minnesota, Defendants. } Bill in Equity.

To the honorable judges of the circuit court of the United States of America for the district of Minnesota, in chancery sitting:

Your orators J. C. Iversen and Samuel Wright, who are citizens and residents of the city of Milwaukee, county of Milwaukee, and

State of Wisconsin, and who bring this suit in behalf of themselves and all other members of The Bankers Life Association of Minnesota, reorganized as The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, one of the defendants herein, wherever residing, or located in the United States of America, whom
2 your honors may permit to join herein, and who will contribute to the expense of same, respectfully represent that for cause of action against the above named defendants they allege as follows:—

First. That they, the above named plaintiffs, your orators herein, are co-members, and holders of certificates of membership in The Bankers Life Association of Minnesota, reorganized as The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, one of the defendants herein, and

Second. That the defendant corporation viz: The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, is a purported reorganization of said The Bankers Life Association of Minnesota, under an act of the legislature of the State of Minnesota, approved April 6, 1901, viz: 3 chapter 143, entitled "An act to amend chapter 175 of the General Laws of 1895" entitled "An act to revise and codify the insurance laws of the State;" which said act impairs the obligation of contracts existing between your orators and The Bankers Life Association of Minnesota reorganized as the defendant company, by attempting to legalize a purported agreement with part of the members thereof, without the consent of the other members, to release themselves, (while retaining membership and appropriating funds of the association, or held by it in trust, to their exclusive use) from the obligation entered into by and between all of the members, that each should pay his share of the assessments occasioned by deaths occurring among all the members; and to secure the association against default in the payment thereof, by depositing an agreed sum of money in the
3 guaranty trust fund of said association in pledge to secure the payment of such assessments; and in default of payment of which his membership *ipso facto* ceased, as in hereafter more particularly set forth; and in consequence of which impairment of the obligations of contracts said act of the legislature of Minnesota is in conflict with the first paragraph of the tenth section of the first article of the Constitution of the United States, as follows viz:—"No State shall pass any law impairing the obligation of contracts;" and which said act of the legislature of Minnesota is therefore unconstitutional and void; and which said purported reorganization of said association was perpetrated on the 5th day of August, 1901, at a regular annual meeting of the holders of certificates of membership in said The Bankers Life Association of Minnesota; and of the proposition for the reorganization of which association at said annual meeting the holders of membership certificates therein had no notice whatever, either in the notification to attend said regular annual meeting, or otherwise; and at which meeting a number of persons, a large majority of all participating in said meeting, were permitted

to vote and take part (both in person and by purported proxy) in the questions and business brought before and transacted at said meeting, who were formerly holders of membership certificates in said "The Bankers Life Association of Minnesota" but who had purchased an unauthorized and fraudulent "new guaranteed option policy," so-called life insurance proposition; concocted and devised
4 by the defendant trustees of said The Bankers Life Association of Minnesota, which, so-called "new guaranteed option policy," life insurance proposition is more particularly and at length hereinafter set forth, and that said reorganization of said The Bankers Life Association of Minnesota as herein set forth is illegal and void.

Third. That the said The Bankers Life Association of Minnesota, reorganized as aforesaid, was organized under the laws of the State of Minnesota, on or about the 6th day of August, 1880, as a mutual assessment association of the class designated by the laws of said State of Minnesota as a co operative, or assessment association, in which all the members are liable for its debts and obligations: A certified copy of the articles of incorporation of said The Bankers Life Association of Minnesota, so organized as hereinbefore stated, is hereto annexed and marked Exhibit "A," and made a part hereof as fully as if herein at length recited.

Fourth. That said articles of incorporation were recorded in the office of the secretary of state of the State of Minnesota on the 6th day of August 1880, and in the office of the register of deeds in and for the county of Ramsey, in the said State on the same day.

Fifth. That for brevity the said articles of incorporation of the said The Bankers Life Association of Minnesota, reorganized as aforesaid defendant herein will hereafter be referred to as the "charter."

Sixth. That the other defendants, viz:—C. H. Bigelow;
5 John B. Sanborn; Maurice Auerbach; Crawford Livingston and J. F. R. Foss, trustees of The Bankers Life Association of Minnesota, reorganized as aforesaid defendant herein, are citizens and residents of the State of Minnesota and duly elected and qualified as such trustees; and that Kenneth Clark and Albert Lindeke, also citizens and residents of said State of Minnesota, are purported trustees of defendant The Minnesota Mutual Life Insurance Company, formerly The Bankers Life Association of Minnesota.

Seventh. That the residence and location of the plaintiffs who may elect to join herein is unknown.

Eighth. That the conditions and agreements between the plaintiffs herein, and the said The Bankers Life Associatiou of Minnesota, whereby said plaintiffs became members and holders of membership certificates therein, are contained in the aforesaid charter of said The Bankers Life Association of Minnesota, and the certificates of membership, and its advertisements and printed representations, sent and made to plaintiffs herein, at the time each of them respectively became members of said association; which advertisements and printed representations, and a certificate of membership, are

hereto attached and marked Exhibit "B" and made a part hereof as fully as if at length herein recited. Articles 4, 7, 10, 11 and 12 of which charter are as follows:—

ARTICLE 4. "Any male person not less than eighteen nor over sixty years of age, and being of good repute for business integrity and the owner, officer clerk of a bank, or recommended thereby and approved by the medical director of this company may be admitted to one membership therein upon his application therefor, and upon his depositing with or to the credit of this company the following sums of money.

6 First: A sum equal to his age, counting to his nearest birthday, in pledge, to secure payment of all assessments against him occasioned by death of members during his life, and to be known as his "guaranty deposit." Second: A sum equal to two per cent. of his guaranty deposit in full for the first assessment against him occasioned by the death of a member. Third: A membership fee equal to half his guaranty deposit. Fourth: His *pro rata* proportion of the annual expense assessment for the unexpired portion of the company's current fiscal year. No application shall be regarded until such deposits are made; and if the applicant be a minor, he must also furnish surety to the satisfaction of the company, that he will not thereafter dis-affirm his said acts. Upon the rejection of any application, all the moneys so deposited (except a sum of three dollars to meet the expense of his medical examination) shall be returned to the applicant on demand."

ARTICLE 7. "A member of this corporation shall continue such only so long as he shall promptly and in good faith pay thereto his proportion of all the periodic and casual assessment thereof; and in case of default on his part in that behalf all money by him paid or pledged to said company shall and may nevertheless be used and applied to the purposes for which the same were so paid or pledged.

This corporation shall have no capital stock; all membership fees and other contributions thereto (except assessments occasioned by the death of its members) shall be used to defray its current expenses, and to increase its efficiency; and the residue thereof if any, shall be used to pay losses occasioned by death of its members.

ARTICLE 10. All amounts pledged to this company to secure payment of assessments occasioned by death of its members shall be used only for that purpose, and meanwhile the same shall be and remain invested in United States registered bonds, and shall constitute and be known as "the guaranty trust fund." Such bonds shall be made payable to this company and shall be transferable or convertable only upon resolution of its board of trustees, and such board shall have the exclusive charge and control thereof. All interest realized from such bonds shall meanwhile be used to defray the company's operating expenses. This article shall never be amended, or in any way at all changed without the consent of every member of this company to be given in writing signed by him, and filed with the

company's secretary, and reciting in full the proposed amendment or change."

ARTICLE 11. "All losses occasioned by the death of members shall be collected by this company from its members, or in case of default on the part of any member the amount of his assessment on account of such loss shall be paid out of his guaranty deposit. Upon the death of any member of this company and due proof thereof, statements shall be prepared and verified by the secretary thereof, and be filed in each depository thereof, and setting forth first, the name and residence of the deceased. Second, the date of his death.
7 Third, the number of memberships held by him. Fourth, the names of the members whose assessments are payable at such depository, with the amount due from each on account of such loss. And notice thereof with request to pay the same, shall be given to each member, either by said company, or its corresponding depository, and either personally or by mail, and if by mail, the mailing of such notice by any officer of said company, or by such depository shall be a sufficient demand for the payment of such assessment and the same shall be paid within thirty days after such demand."

ARTICLE 12. "Upon the death of each member of this company his family shall receive therefrom, first, the whole amount pledged thereto by the deceased. Second, a sum equal to two per cent. of the then subsisting "guaranty trust fund," not exceeding however two thousand dollars for each full membership, one thousand dollars for each half membership held by the deceased, and in force at the time of his death, and not exceeding six thousand dollars in any case.

Such amounts shall be paid as soon as practicable and in all cases within sixty days after due proof of such death, and such payments shall be made to the family of the deceased only upon the receipt of such person, or persons for them as the deceased shall have designated therefor in his original application, or thereafter under his hand and duly acknowledged and filed with the secretary of said company."

The following is one of the advertisements and printed representations made by said The Bankers' Life Association of Minnesota to plaintiffs whereby they became members thereof—

"The guaranty trust fund enables the company to discharge its contracts in full, whether members pay or fail to pay. So long as a member meets his own payments promptly he cannot suffer in consequence of the negligence of others for this fund will protect him."

Ninth. That in accordance with the provisions of said charter as regards the requirements of the guaranty trust fund, and payments and assessments to be paid, and in accordance with such
8 legally made amendment of said charter as are not repugnant to article 10 thereof; and said membership certificates, printed representations and advertisements made to them the plaintiffs herein, they, the said plaintiffs became members of said The

Bankers Life Association of Minnesota, and made the required deposits in pledge in the guaranty trust fund thereof, and have paid all moneys and complied with all the requirements of said The Bankers Life Association of Minnesota, since becoming members thereof until they, said plaintiffs, became aware of the fraudulent nature and acts as hereinafter set forth of said The Bankers Life Association of Minnesota and its trustees defendants hereinbefore named.

Tenth. That the plaintiffs have not at any time, or in any manner consented to any change whatever of article 10 of the charter of said The Bankers Life Association of Minnesota, or of any other article of said charter; a change in which would in effect be a change or alteration of said article 10; and have never consented to said purported reorganization of said The Bankers Life Association of Minnesota.

Eleventh. That article 14 of the aforesaid charter of the Bankers Life Association of Minnesota, defines the powers of the trustees thereof as follows:—

"Such board of trustees shall hold regular meetings at the office of the company on the first Monday of each month and shall have power,

First. To adopt and provide a corporate seal of this company also to establish by-laws, and make all rules and regulations deemed by them expedient for the management of the affairs in accordance with law and not incompatible with an honest purpose.

Second. To appoint the other officers of this corporation, to fix their salaries, to define their respective provinces and duties; to suspend or remove any of them for cause, and to fill all vacancies occasioned thereby or by death.

9 Third. To establish fiscal agents in any place to be known as depositaries and to define their powers and duties; also to fix their compensation.

Fourth. To reduce the rate of assessments for death losses, as well as those for operating expenses, in case the same prove greater than necessary to discharge the obligations of said company.

Fifth. To amend these articles except as therein otherwise provided, and to generally direct, manage and control the business and concerns of this company."

Twelfth. That defendant trustees of said The Bankers Life Association of Minnesota, with the intention of defrauding the beneficiaries and heirs at law of plaintiffs and all persons who should become members of said The Bankers Life Association of Minnesota, dying in good standing as members thereof, of the amount of their deposits made and pledged in the guaranty trust fund of said association last aforesaid, did on the 9th day of August 1884 change and alter the effect, result, and intention of article 10 of its charter, by expunging from article 12 of said charter the following words, to-wit:—

"First. The whole amount pledged thereto by the deceased." Which words being that portion of said article 12 which provided

that the amount pledged by the member to the company (his deposit in the guaranty trust fund) should be returned to the member's family upon his death in addition to payment of the amount of insurance secured by the said article, and by adding thereto the proviso that the said amendment of said article 12 should not go into effect until the date when the guaranty trust fund should aggregate $100,000; and that it should not apply to certificates of membership issued prior to the date when said amendment should go into effect.

10 Thirteenth. That in execution of the fraudulent intention and designs of defendant trustees of said The Bankers Life Association of Minnesota, in thus altering the provisions of article 10 of the charter of said association, as to the use of the guaranty trust fund *of* thereof by expunging from article 12 of its charter the words as in the last preceding paragraph stated, said trustees of said The Bankers Life Association of Minnesota have, since the guaranty trust fund of said association amounted to one hundred thousand dollars, retained and withheld, and are retaining and withholding from the beneficiaries, and heirs at law of members of said association dying in good standing who became members thereof since said guaranty trust fund amounted to one hundred thousand dollars, the guaranty deposits of such persons in the guaranty trust fund of said association; for the amount of which deposits pledged to said association in the guaranty trust fund thereof the plaintiffs herein are liable to said beneficiaries and heirs at law aforesaid, should the assets of said association be inadequate to satisfy same.

Fourteenth. That the guaranty trust fund of said The Bankers Life Association of Minnesota amounted to one hundred thousand dollars at some time during the year 1885, (the exact date being to these plaintiffs unknown), and that since which date the number of members of said association who have died in good standing is very large; and the total deposits of such members in the guaranty trust fund of said association amounts to a very large sum.

11 Fifteenth. That on or about the 28th day of November 1890 and on or about the 5th day of September 1892, and on or about the 21st day of November 1892, and on or about the 8th day of August 1894, the said defendant trustees, of said The Bankers Life Association of Minnesota, with the intention of defrauding plaintiffs and their co-members, made purported amendments to the charter of said The Bankers Life Association of Minnesota, further and more radically changing the effect intention and result of article 10 of its charter as follows:—

ARTICLE 4. "Any male person not less than eighteen nor over fifty-five years of age (counting to his nearest birthday) approved by the medical director of this company may be admitted to one membership therein, upon his application therefor, and upon his depositing with or to the credit of the company the following sums of money, First, as many dollars as he is years of age (counting to his nearest birthday) based upon a membership of two thousand

dollars, or a like proportion upon other amounts as his deposit in the guaranty trust fund of the association, which fund shall be as a pledge to secure payments to be made by this association for death of members, and shall belong to this association. Second, a membership fee equal to half his guaranty deposit. Third, his proportion of the annual expense assessment for the company's current fiscal year. Provided however that time for making the said payments, or any of them, may be granted to any applicant, subject to the approval thereof by the board of trustees; but when granted default made in the punctual payment of such deferred payments or any of them, at maturity, shall operate to terminate the applicant's membership, and to cancel his certificate thereof without any further act or ceremony. And provided further, that if any member to whom time shall have been so granted shall die before maturity of such deferred payments, or any of them, the amount thereof then remaining unpaid shall operate as payment *pro tanto* of the amount due from this company on account of such death, and the company shall be liable only for the residue. If the applicant be a minor he must at the option of the company, also furnish satisfactory surety that he will not thereafter dis-affirm his said acts upon the rejection of any application all moneys so deposited (except three dollars to meet the expense of his medical examination) shall be returned to the applicant on demand."

12 ARTICLE 11. "All assessments upon the members of this company for the payment of death losses shall be made by resolution of the board of trustees and thereupon a statement or notice shall be prepared, which shall truly state the cause and purpose of such assessment, and showing the name and residence of the deceased member as it appears upon its books or records of the association, the date of his death and the number of memberships then held by him. A copy of said statement or notice showing the amount due from him on account thereof with request to pay the same shall be served on each member by said company, and such service may be either personal or by mail, and if by mail the mailing of such statement or notice by said company to the address of such members as it appears upon the books or records of this corporation, shall constitute a sufficient demand for the payment of such assessment and the same shall be paid within thirty days after such demand. Nothing herein shall be construed to require this association to make an assessment unnecessarily or immediately upon the death of a member, or to prohibit postponing assessments until other death claims shall have accrued sufficient in the judgment of the trustees of this association to warrant an assessment therefor. If any mortuary assessment of two per cent. of the deposit of each member in guaranty trust fund shall produce an amount more than sufficient to discharge all previously approved death claims then the excess so realized may be applied in the discretion of said board of trustees in the payment of succeeding death claim or claims. In case of death or default on the part of any member to pay any of his assessments the association may use his deposit in

the guaranty trust fund to pay death losses in such manner as it shall deem best and such use shall not work a payment of any assessment against such defaulting member."

Sixteenth. That the defendant trustees of said The Bankers Life Association of Minnesota in execution of their purpose and intention from the time the said association was first organized, to defraud the members thereof and all persons who should become members, including the plaintiffs herein, of their deposits pledged to the said association in the guaranty trust fund thereof, have in the case of members who defaulted in the payment of their assessments, refused and neglected, and still refuse and neglect to use the deposits of such members "only to pay assessments occasioned by death
13 of members" of said association; as required by article 10 of the charter of said association, but have retained and withheld said deposits of such defaulting members for the alleged benefit (as stated in the sworn report of the association to the insurance commissioners of the several States) of "persistent members;" and excluded the remaining members of said association from the benefit and advantage of paying the much lower rate of assessment the application of such deposits to the payment of defaulting members would have made.

Seventeenth. That the number of members of said association who defaulted in the payment of their assessments thereto since its organization is very large, and the total amount of deposits in the guaranty trust fund of said association pledged thereto for the payment of such defaulting members' assessments is a very large sum.

Eighteenth. That the total amount of both the items alleged in the preceding paragraphs 13 and 16 to be fraudulently withheld from the members, and beneficiaries and heirs at law of members dying in good standing, in said association, amounted on the 31st day of December, 1898 to not less than $146,593.08.

Nineteenth. That not less than the sum of $40,663.70 of said deposits withheld as aforesaid, was during the year 1893 taken and "carried" away from the guaranty trust fund of said association, by said defendant trustees of said association, and placed in a certain so-called mortuary reserve fund, and that said deposits of defaulting members and members dying in good standing as aforesaid,
14 have continuously since said year 1893 been carried away from said guaranty trust fund by defendant trustees as aforesaid and placed in so-called mortuary reserve fund.

Twentieth. That for the creation of said, so-called, mortuary reserve fund, as well as for divers and sundry other funds created by said trustees from the guaranty trust fund of said association, no authority exists whatever.

Twenty-first. That said defendant trustees of said The Bankers Life Association of Minnesota fearing prosecution from the discovery of their fraudulent designs and acts, and their fraudulent perversion of the ostensible object in organizing said association, did, on or about December 24th 1898 make a further purported amendment to the charter of said association purporting to give them authority

to issue a so-called "new guaranteed option policy" life insurance proposition, most preposterous and depraved, (one of which is hereto attached and marked Exhibit "C," and made a part hereof as fully as if at length herein recited) in that, first, said so-called new guaranteed option policy, life insurance proposition, contains in the application therefor an attempt to obtain the consent of plaintiffs and their co-members to change the form of article 10 of the charter of the said association providing *in hæc verba*.

"All amounts pledged to this company to secure payments of assessments occasioned by death of its members shall be used only for that purpose," to correspond with the fraudulent purported amendments to said association's charter and the grossly fraudulent acts of the defendant trustees in execution of their original designs in organizing said association, in the following manner to-wit:—By having printed in the said application for said so-called "new guaranteed option policy," life insurance proposition, the following language, viz:—

"I do hereby irrevocably consent that article 10 of the article- of incorporation of the Bankers Life Association of Minnesota may at any time be changed and amended, so that the same when amended and changed shall read as follows, "All amounts paid to this company to secure payment for death of its members shall be used only for that purpose," which most preposterous and depraved so-called, "new guaranteed option policy, life insurance proposition, the defendant trustees of said The Bankers Life Association of Minnesota, have endeavored and are endeavoring in the city of Milwaukee, county of Milwaukee and State of Wisconsin, and in the city of Chicago, county of Cook and State of Illinois, and in other places throughout the United States, wherever plaintiffs reside by sending persons to them for the purpose, and by writing letters to them, to force each of plaintiffs to purchase, under penalty of raising assessments on each of plaintiff's certificates of membership in said association if they refuse to make such purchase: one of which letters is as follows:—

Trustees.

C. H. Bigelow. J. B. Sanborn. M. Auerbach. W. R. Merriam. C. Livingston.

Cortlandt M. Taylor, president
Gen. J. B. Sanborn, vice pres't.
Douglas Putnam, secretary.
C. H. Bigelow, treasurer.

The Bankers Life Association of Minnesota

has the largest cash reserve fund, in proportion to its membership, of any company on the assessment plan in either Europe or America.

Over two million dollars paid in death losses.

Assets over. $865,000.00.

U. S. registered bonds as securities

$560,000.00 (par value) U. S. 4 % bonds deposited with insurance department of Minnesota in trust for policy holders.

MILWAUKEE, WIS., *Nov.* 2, 1899.

—— ——, city.

DEAR SIR: It is my desire in addressing you at this time to advise you of a new departure that our company has taken in going out entirely of the assessment business and establishing and writing policies absolutely on a legal reserve basis, with rates, face of
17 contract and all options guaranteed and written plainly on the face of the contract, whereby giving one the most absolute guaranty which he did not have on the old policy, as you are aware that the old policies never carried a guaranteed rate and was never an asset until death terminated it.

The new policy carries a guaranteed loan, paid up, and extended insurance values and can be used as an immediate asset at any period after the third year.

What prompted the company to take this departure was this: We have for the past year and a half gone through a most thorough actu-rial investigation, by the most prominent actuaries of this country, and it was the concensus of their opinion that our former rates on the old contract were not adequate to protect us in our future mortality.

Taking this situation under serious consideration, our directors considered it advisable that as a change of rate was inevitable, the proper time to protect the company and its policy holders was at the present period when our finances and position were in the most flourishing condition, and company in a position to grant our old policy holders our new guaranteed option without a new examination and as a credit to the new premium a sum equal to the entire reserve that has been paid to usand its earnings from date of payment.

Where the reserve notes have not yet matured, they are cancelled and returned and new policy issued without examination.
18 This proposition is meeting with the most positive favor among our policy holders, and they are transferring their old contracts for new ones about as fast as we can reach them.

The stability, permanency and management of our company has never been questioned and our financial condition has never been more prosperous than at present, and in presenting to you our new policy we do so with the utmost confidence that it cannot fail to meet your approval after you have seen the same and considered the proposition that we have to submit to you.

The writer will remain in your city some little time and my address while here will be at the Blatz hotel. If you will drop me a line designating time and place for an interview, I will be more than pleased to respond to your demand and go into the utmost detail of the matter with you.

Trusting to hear from you at a very early date, and thanking you in advance for same, I am,

Yours respectfully, E. W. LEONARD,
State Manager.

And another reads as follows:—

ST. PAUL, MINN., *Feb.* 27, 1901.

"To the members:

We are transferring our membership to our new policy, under which we maintain a 4% reserve, as rapidly as we can by personal solicitation. *In time the old contracts will be wiped out or so decreased that they will be of little importance, and the company will step forth with its business all on a scientific and safe basis.*

Full instructions and all necessary papers to enable you to place your policy upon the proposed plan, will be furnished by our Mr. R. D. Gallagher, in the near future. *Should you wish to communicate with him before he reaches your city, please address him at No.* 21 *Fire and Marine building, St. Paul, Minn.*

Thanking you in advance for any courtesies shown our representative on behalf of this office,

I am, yours very truly,

CLARENCE E. SECOR, *Manager.*"

Twenty-second. That second, the terms of said most preposterous and depraved life insurance proposition provide that to any member of said association purchasing said proposition, will be given his guaranty trust fund deposit in the original guaranty trust fund of said association, to be applied in aliquot parts in part payment of the first three premiums on said new life insurance proposition; thereby depriving your orators and their co-members, who refuse to purchase said proposition of life insurance, of the protection of the deposits of those members of said association who purchase said new life insurance proposition by paying in part therefor with their original deposits in the guaranty trust fund of said association, made and pledged to secure the payment of assessment occasioned by death of members, as per article 10 of the original articles of incorporation of said association.

Twenty-third. That third, said members of said association who enter into said, so-called, "new guaranteed option policy," life insurance proposition, are released, by taking and purchasing said proposition, from the payment of any assessments for the death of any of the members of said association who refuse to enter into said so-called "new guaranteed option policy," life insurance proposition; and are released from any other charge, or equivalent in compensation for the withdrawal of said deposits pledged to said association for the protection of its members from desertion; and default in payment of assets.

Twenty-fourth. That up to October 2, 1900 a large number of the members of said association have been allowed to withdraw their deposits as aforesaid from the guaranty trust fund thereof, until the amount of such persons' original deposits, made in pledge as hereinbefore stated in the guaranty trust fund of said association, (with interest at the rate of ten per cent. per annum for the first ten years

any of such persons were members of said association, and five per cent. interest per annum for each year such persons were
21 members of said association prior to that time) and so withdrawn, is stated to be on the aforesaid date (in a purported report of a further purported investigating committee stated therein to have been appointed to "investigate the affairs and policies of the company") $120,137.50.

One of which purported reports of said purported investigating committee is attached hereto and marked Exhibit "D" and hereby made a part hereof as fully as if at length herein recited.

Twenty-fifth. That the trustees of said association have since the sale of so-called "new guaranteed option policy" life insurance proposition by them to persons, who were prior thereto members of said association, and to other persons, paid to the beneficiaries named in so-called "new guaranteed option policy" life insurance proposition, or other persons, the principal sum named in such policies, where the persons so purchasing the same have since died.

Twenty-sixth. That said defendant trustees of said The Bankers Life Association of Minnesota, have so despoiled devastates, wrecked, mismanaged and diverted the funds and property thereof entrusted to their management and care, with the result that the following liabilities are outstanding, past due and wholly unpaid, against the said Bankers Life Association of Minnesota, reorganized as aforesaid defendant company herein viz:—

1st. To the holders of certificates of membership in said association for the amount of their deposits in the guaranty trust
22 fund of said association.

2nd. To the beneficiaries and heirs at law of deceased members of said association who became members since the guaranty trust fund thereof amounted to $100,000, and died in good standing, for the amount of their deposits in the guaranty trust fund of said association.

3rd. To the holders of certificates of membership in said association for the amount of assessments paid by them from time to time in excess of the amount payable by them, had the trustees of said association used the deposits of defaulting members to pay their assessments with, as required by article 10 of said association's charter.

4th. To holders of certificates of membership in said association for the amount of guaranty trust fund deposits taken and "carried" away from said fund by the trustees of said association, and given to persons who purchased the so-called "new guaranteed option policy life insurance proposition, of said association, to use in part payment of the first three premiums of said life insurance proposition.

5th. Th holders of certificates of membership in said association, for the amount paid to persons on account of, or the beneficiaries named in, the so-called "new guaranteed option policy" life insurance proposition purchased by persons who were members of said association who have since died.

6th. To the holders of certificates of membership in said association, for all moneys belonging to said association, given to
23 persons who were members of said association, as an inducement, or otherwise, to buy the so-called "new guaranteed option policy," life insurance proposition; and for all moneys of said association given to any other person, or persons, for any other purpose foreign or antagonistic to the interests of the holders of certificates of membership in said association.

Twenty-seventh. That the entire assets of said The Bankers Life Association of Minnesota, reorganized as aforesaid defendant company herein, are wholly inadequate to meet said liabilities, and that said The Bankers Life Association of Minnesota, reorganized as aforesaid defendant company herein, is utterly and hopelessly insolvent.

Twenty-eighth. That the said The Bankers Life Association of Minnesota, reorganized as aforesaid defendant company herein in its statements of assets and liabilities to the public, and to the insurance departments of the several States wherein it is licensed to transact business, is fraudulently padding and inflating its assets with fictitious and valueless tokens of indebtedness, for which no valuable consideration was ever had or given to the persons from whom said fictitious and valueless tokens of indebtedness were taken in the following manner, to-wit,—by charging against the hereinbefore mentioned new insurance proposition, purchased by persons who were members of said association, a certain part of the difference in rate on said new insurance proposition between the age of the purchaser when taking said new insurance proposition and the age at which he became a member of said association; and taking from
24 said purchaser of said new insurance proposition, a so-called interest bearing lien upon said new insurance proposition, for the amount of said charge; which said fictitious and valueless interest bearing liens (so-called) are wholly and utterly worthless and of no account whatever. As to the character of said interest bearing liens (so-called) your orators attach hereto and make a part hereof as fully as if recited at length herein, the opinions of the honorable commissioner of insurance, and of the honorable attorney general of the State of Massachusetts marked Exhibit "E."

Twenty-ninth. That the defendant trustees of said The Bankers Life Association of Minnesota, pretend and offer as an excuse for repaying to persons who were members of said association, purchasing the so-called "new guaranteed option policy" life insurance proposition, their deposits pledged in the guaranty trust fund of said association; and other of its moneys to them and to other persons, for purposes foreign and antagonistic to it, that they the said defendant trustees had authority and were empowered by the clause in article 7 of the original charter of said association, set forth in paragraph eighth thereof, viz: "All membership fees and other contributions thereto (except assessments occasioned by the death of its members) shall be used to defray its current expenses, *and to increase its efficiency;* and the residue thereof, if any, shall be used to

pay losses occasioned by death of its members;" to thus give to such persons the said deposits and other moneys of said associa-
25 tion; and thus create interests therein antagonistic to the interests of plaintiffs herein, under the pretense of increasing the efficiency of said association.

Thirty. That the pretensions as stated in the preceding paragraph, of defendant trustees, are set forth in the hereinbefore mentioned purported report of the purported investigating committee, hereto attached as Exhibit "D" as follows, viz: "We find that the contingent fund has been drawn upon during the last year for the purpose of allowing policy holders under the new plan, who have changed from the assessment plan, credits on their premiums, the actuary having decided that a proper allowance to each policy holder thus transferred consists in repaying the member an amount equal to his contribution to the guaranty trust fund, with 10 per cent. interest for each year he has been a member for the first ten years and then 5 per cent. interest for each year over ten years. During the past twelve months $120.137.50 has been used in this way, which leaves $39.981.63 to the credit of this fund. We are assured by the management that the future income of the contingent account will be sufficient to meet future demands from this source."

Thirty one. That said The Bankers Life Association of Minnesota, reorganized as defendant company, in its sworn report for the year ending December 31, 1898, to the commissioner of insurance of the State of Wisconsin, wherein it is licensed to transact business, states that it keeps individual accounts with its members, in accordance with the requirements of the laws of the State of Wisconsin,
26 as set forth in the open letter of said commissioner to the public, dated May 15, 1897; containing the opinion of the attorney general of said State, as to the plain obligation of such associations as the Bankers Life Association of Minnesota, to keep such individual accounts with their members. A copy of which open letter of said commissioner of insurance of said State of Wisconsin containing said opinion of the said attorney general of said State, is hereto attached and marked Exhibit "F" and hereby made a part hereof as fully as if herein at length inserted. All of which actings, doings, neglects and pretenses are contrary to equity and good conscience and tend to manifest wrong and injury of your orators in the premises.

For as much therefore as your orators are without remedy in the premises except in a court of equity, and to the end therefore that the said defendants may if they can, show why your orators should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say,

1st. Whether any of the money deposited in pledge in the guaranty trust fund of the Bankers Life Association of Minnesota, reorganized as the Minnesota Mutual Life Insurance Company
27 under its original charter, by members of said association who afterwards defaulted in the payment of assessments against them occasioned by the death of members of said association, was ever used to pay such assessments against such defaulting members, prior to the time of making the purported amendments to said association's charter, viz: numbers four and eleven? If yea, set forth fully how much of, and when said deposits were so used.

2nd. Whether any of the money deposited in pledge in the guaranty trust fund of the Bankers Life Association of Minnesota, reorganized as aforesaid defendant company, by members of said association who became members thereof after its guaranty trust fund amounted to $100.000 and who afterwards died in good standing, was ever paid to the beneficiaries, or other persons named in the certificates of membership of said deceased member? If yea, set forth fully how much of said deposits were paid to the beneficiaries or other persons named in the certificates of membership of said deceased members; and give the date names and residence of the persons to whom such deposits were paid.

3rd. What is the total amount on December 31, 1898 of the deposits made in the guaranty trust fund of The Bankers Life Association of Minnesota, reorganized as aforesaid defendant company, from the date of the organization of said association, by members thereof who defaulted in the payment of assessments against them occasioned by the death of members of said association.

4th. What is the total amount from the time the guaranty
28 trust fund of The Bankers Life Association of Minnesota, reorganized as aforesaid defendant company, amounted to $100,000 to December 31, 1898; of the deposits in said fund by persons who became members of said association during that time and died in good standing.

5th. How long has said The Bankers Life Association, reorganized as aforesaid defendant company, been keeping individual accounts with its members for their *pro rata* share of the assets of said association in excess of one assessment on all members thereof, as per the requirements of the insurance department of the State of Wisconsin; stated in the open letter of the commissioner of that department to the public, May 15, 1897, and in compliance with which the sworn report of said association to that department for 1898 states that it does keep such individual accounts?

6th. Whether all the holders of certificates of membership in The Bankers Life Association of Minnesota, reorganized as aforesaid defendant company, were notified or asked to vote the authority to said association to issue the so-called "new guaranteed option policy" life insurance proposition; or whether all the holders of membership certificates in said association ever gave their written consent to said association to issue the so-called new guaranteed option policy

life insurance proposition, issued by said association on or about January 1, 1899?

7th. If you answer that all the holders of certificates of membership in said association were not notified to vote the authority or give their written consent to said association to issue said
29 "policy" life insurance proposition; by virtue of what authority did said association issue said "policy" proposition?

8th. Whether since the date on which said so-called "new guaranteed option policy" life insurance proposition was first issued, any of said "policies" were sold to, and the money for the premiums thereon received by said association, from persons other than holders of membership certificates in said association? If yea set forth fully the total amount of money received from such sale of said "policies" and how many of such "policies" were so sold.

9th. Whether, if the association keeps individual accounts with its members, as per its sworn report to the insurance department of the State of Wisconsin referred to in interrogatory five, the amount said association credits on the three first premiums on the "new guaranteed option policy" life insurance proposition, represents the difference between the guaranty trust fund pledge of the member taking the "new guaranteed option policy," life insurance proposition, and the amount of his credit balance in the individual accounts referred to?

10th. Whether *of* the amount the said association credits on the first three premiums on said "new guaranteed option policy" proposition *does not represent the whole difference* between the amount of the original guaranty trust fund pledge and the amount of the credit balances of the individual accounts of the members taking the "new guaranteed option policy" life insurance proposition, *how much of that difference is represented* by the amount credited on the three first premiums on that policy?

11th. Do you know, or can you set forth any other matter
30 or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Wherefore your orators pray that a decree may be entered dissolving the defendant The Minnesota Mutual Life Insurance Company, formerly The Bankers Life Association of Minnesota, and winding up its affairs, that a receiver may be appointed according to the course of practice of this court, and with the usual powers of receivers in like cases, of all the property equitable interests, things in action and effects of the defendant The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly The Bankers Life Association of Minnesota, to be by him collected, especially all sums of money paid out under, or on account of the so-called "new guaranteed option policy" life insurance proposition, or any other or different contract or proposition of insurance than that contemplated by, or within the purview of the charter and organization of

said The Bankers Life Association of Minnesota, and that said property equitable, interest things in action and effects, be by said receiver marshaled and distributed under the direction of this honorable court.

That an account may be taken by and under the direction of this honorable court of the indebtedness due to plaintiffs herein, and all other creditors of the defendant The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly The Bankers
31 Life Association of Minnesota; that said receiver be decreed to pay to plaintiffs herein, and said other creditors the amounts due to them respectively, together with your orators' costs, charges and attorneys' fees in this behalf sustained; and that he be decreed to apply for that purpose, all money, property or choses in action in his hands belonging to the defendant The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly The Bankers Life Association of Minnesota. And if after exhausting the said assets of said corporation, there shall any of the debts or liabilities of the defendant The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly The Bankers Life Association of Minnesota, remain unpaid, that each of said defendant trustees of defendant corporation aforesaid viz: C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke and J. F. R. Foss, who by their fraudulent actions, doings, neglects and pretenses have brought your orators to this extreme, shall be decreed to pay his *pro rata* share of such debts and liabilities, and if any or either of said defendant trustees of defendant corporation shall not have property enough to satisfy his portion of such debts and liabilities, then that the remaining solvent defendant trustees of defendant corporation shall be decreed to pay the same; and that your orators may have such other and further relief in the premises as equity may require, and to your honors shall seem meet.

May it please your honors to grant unto your orators the
32 writ of subpoena in chancery to be directed to the marshal of the district of Minnesota, commanding him that he subpœna the aforesaid defendant The Minnesota Mutual Life Insurance Company, formerly The Bankers Life Association of Minnesota, and aforesaid trustees of defendant corporation, viz. C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke and J. F. R. Foss, to appear before the said court on the first day of the next term thereof, to be held at the court house in St. Paul, in the county of Ramsey, and district of Minnesota aforesaid, and then and there to answer this bill and to stand to, perform and abide such order and decree therein as to your honors shall seem meet.

And may it please your honors to grant unto your orators the People's writ of injunction to be directed to the defendant trustees of defendant corporation, viz. C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke and J. F. R. Foss and their agents, and the officers and agents

of the defendant corporation aforesaid, restraining and prohibiting them from soliciting persons to buy, or selling, or issuing to persons or publishing said so-called "new guaranteed option policy," life insurance proposition or any other or different contract, or proposition of insurance than that contemplated by, or within the purview of the charter and organization of said The Bankers Life Association of Minnesota, and that said defendant trustees of said defendant corporation, viz: C. H. Bigelow, John B. Sanborn, Maurice
33 Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke and J. F. R. Foss be ordered, directed and compelled to deliver surrender and discover to the receiver to be appointed by the honorable court herein, all books, papers, accounts, property, equitable interests, things in action and effects of the defendant corporation, and that they, the said defendant trustees of defendant corporation aforesaid and their agents, and the officers and agents of defendant corporation aforesaid, be enjoined and restrained from selling assigning, transferring, delivering negotiating, discharging, receiving, collecting, incumbering, or in any way or manner disposing of, or intermeddling with any debts or demands due to said defendant corporation aforesaid, or any bills, bonds, notes, drafts, checks, book accounts, mortgages, judgments, or other debts due to it defendant corporation aforesaid, and also from assigning, transferring, or in any manner incumbering, or disposing of, or intermeddling with any money in coin, bank bills, drafts, or checks belonging to it, or any stock or interest in any private or incoeporated company, or any property real or personal, things in action, or chattels real, held by it or by any other person, firm or corporation for it, or in which it has any interest what-so-ever until further order of said court.

DILLON & GOETZ,
Sol. for Complainants.
JOHN F. BYERS,
Counsel for Complainants.

STATE OF WISCONSIN, } ss:
County of Milwaukee, }

34 J. C. Iverson on oath states that he is one of the complainants in the foregoing bill and holder of membership certificate No. 18307, and had heard the same read, and knows the contents thereof. That the matters in said bill contained are true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

J. C. IVERSON.

Subscribed and sworn to before me this 3 day of Oct. 1901

[SEAL.] CHAS. McANDERSON,
Notary Public, Milwaukee County, Wisconsin.

My commission expires June 4–1905

STATE OF WISCONSIN, }
County of Milwaukee, } *ss:*

Samuel Wright on oath states that he is one of the complainants in the foregoing bill named and holder of membership certificates No. $\frac{1608}{1609}$, and has heard the same read, and knows the contents thereof. That the matters and things in said bill containes are true of his own knowledge except as to those matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

SAM'L WRIGHT.

Subscribed and sworn to before me this 30 day of August 1901.
[SEAL.] THEODORE BURMEISTER,
Notary Public, Milwaukee County, Wisconsin.

My commission expires January 10–1901.

35 NOTE.—The defendants, Charles H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke and J. F. R. Foss, are each required to answer the interrogations in the foregoing bill of complaint numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 respectively.

DILLON & GOETZ,
Solicitors for Complainants.

JOHN F. BYERS,
Counsel for Complainants.

36 COMPLAINANTS' EXHIBIT "A."

Know all men by these presents, that we whose names are hereunto subscribed have agreed to and do hereby associate ourselves and become incorporated under the laws of the State of Minnesota, and pursuant thereto have agreed to and do hereby adopt and sign the following articles of incorporation.

I.

The name of this corporation shall be the Bankers Association of Minnesota," and its location and principal place of business shall be Saint Paul in said State.

II.

The general purpose of this corporation shall be to secure to its members employment and to the families of its deceased members pecuniary assistance.

III.

The general plan of its operation shall be:
First. To obtain and record the antecedents, circumstances and

business qualifications of all its members, to register their applications for employment as well as all applications for employees, and to put the respective applicants in communication with each other, with recommendations according to such records.

Second. To assess and collect from its members and thereupon pay over to the families of its deceased members stipulated sums of money to be secured to them by the personal obligations
37 of its members guaranteed by sufficient pledges of money and the investment thereof meanwhile in United States registered bonds.

IV.

Any male person not less than eighteen nor over sixty years of age and being in good repute for business integrity and the owner, officer or clerk of a bank or recommended thereby and approved by the medical director of this company may be admitted to one membership therein upon his application therefor and upon his depositing with or to the credit of this company the following sums of money)—

First. A sum equal to his age, counting to his nearest birthday, in pledge to secure payment of all assessments against him occasioned by death of members during his life and to be known as his guaranty deposit.

Second. A sum equal to two per cent. of his guarantee deposit in full for the first assessment against him occasioned by death of a member.

Third. A membership fee equal to half his guarantee deposit

Fourth. His *pro rata* proportion of the annual expense assessment for the unexpired portion of the company's current fiscal year.

No applicant shall be regarded until such deposits are made and if the applicant be a minor he must also furnish surety to the satisfaction of the company that he will not thereafter disaffirm his said acts.

Upon the rejection of any application all the monies so deposited (except the sum of three dollars to meet the expense of his
38 medical examination) shall be returned to the applicant on demand.

V.

It shall be competent to admit persons to half membership in this company and any member may hold as many as three memberships therein, but in all such cases his deposits and future assessments shall be proportionately diminished or increased.

Certificates of membership shall be issued to its members under the seal of the corporation signed by the president and countersigned by the secretary thereof and expressing the number of memberships they hold respectively.

At any election of trustee each member shall be entitled to cast one vote for each full and half a vote for each half membership held by him.

VI.

Each membr of this company shall and will pay thereunto on the fourth Monday of September in each year an assessment not exceeding fifteen per cent. of his guarantee deposit, to be made for and on account of operating expenses and to be known as his periodic assessment and upon the death of each member he shall and will also pay to said company on demand therefor an assessment not exceeding two per cent. of his guaranty deposit. The same to be by said company paid to the family of the deceased member, and to be known as his casual assessment.

All assessment upon members of this company whether periodic or casual shall be apportioned among them *pro rata* that is to say in proportion to the amounts of their guaranty deposits respectively, and the same shall be payable at the depository where the member lodged his application for membership or at the successor thereof. Provided that any member may in writing signed by him and filed with the company's secretary designate where his assessments shall be payable.

VII.

A member of this corporation shall continue such only so long as he shall promptly and in good faith pay thereto his proportion of all the periodic and casual assessments thereof, and in case of default on his part in that behalf, all money- by him paid or pledged to said company shall and may nevertheless be used and applied to the purpose for which the same were so paid or pledged.

This corporation shall have no capital stock and all membership fees and other contributions thereto (except assessments occasioned by death of its members) shall be used to defray its current expenses and to increase its efficiency, and the residue thereof, if any, shall be used to pay losses occasioned by death of its members.

VIII.

Any person having once been a member of this company may be re-admitted thereto upon the same terms as other persons if he apply therefor within ninety days from the termination of his membership and pay all assessments made upon him to date of such application, but in such cases if the board of trustees shall be satisfied that such applicant's default was not wilful and was occasioned by sickness or other misfortune then he shall have credit upon his application for re-admittance for the amount of his original guaranty deposit or membership fee, or both as said board may direct.

IX.

It shall be the duty of the respective members of this company as well as every officer and agent thereof to promptly report to its board of trustees every infraction of these articles as well as any breach of duty on the part of any member, officer or agent thereof;

also covering the application of any ineligible or unworthy person for membership, and thereupon it shall be the duty of said board of trustees to investigate such charge and to take adequate measures for the protection of all concerned.

X.

All amounts pledged to this company to secure payment of assessments occasioned by death of its members shall be used only for that purpose, and meanwhile the same shall be and remain invested in United States registered bonds and shall constitute and be known as "the guaranty trust fund." Such bonds shall be made payable to this company and shall be transferable or convertible only upon resolution of its board of trustees, and such board shall have the exclusive charge and control thereof.

All interest realized from such bonds shall meanwhile be
41 used to defray the company's operating expenses.

This article shall never be amended or in any way at all changed without the consent of every member of this company to be given in writing signed by him and filed with the company's secretary and reciting in full the proposed amendment or change.

XI.

All losses occasioned by the death of members shall be collected by this company from its members, or, in case of default on part of any member, the amount of his assessment on account of such loss shall be paid out of his guaranty deposit.

Upon death of any member of this company and due proof thereof, statements shall be prepared and verified by the secretary thereof, and setting forth First. The name and residence of the deceased. Second. The date of his death. Third. The number of memberships held by him. Fourth. The names of the members whose assessments are payable at such depository, with the amount due from each on account of such loss. And notice thereof with request to pay the same shall be given to each member, either by said company or by its corresponding depository and either personally or by mail; and if by mail, the mailing of such notice by any officer of said company or by such depository shall be a sufficient demand for the payment of such assessment, and the same shall be paid within thirty days after such demand.

42 XII.

Upon the death of each member of this company his family shall receive therefrom First. The whole amount pledged thereto by the deceased. Second. A sum equal to two per cent. of the then subsisting "guaranty trust fund" not exceeding however two thousand dollars for each full membership, one thousand dollars for each half membership held by the deceased and in force at the time of his death, and not exceeding six thousand dollars in any case. Such amounts shall be paid as soon as practicable and in all cases within

sixty days after due proof of such death, and such payments shall be made to the family of the deceased only upon the receipt of such person or persons for them as the deceased shall have designated therefor in his original application or thereafter under his hand and duly acknowledged and filed with the secretary of said company.

XIII.

The fiscal year of this company shall commence upon the first Monday of September in each year, and on or before the Monday following shall be prepared and filed with each depository thereof a statement under the hand of the president and chairman of the board of trustees and verified by the secretary, and showing, First. The number of memberships in force at the beginning of the current fiscal year. Second. The amount of the "guaranty trust fund then on hand either in money or in bonds and how much in
43 cash. Third. The amount of death losses sustained and then unpaid if any. Fourth. The names of all members whose periodic assessments are payable at such depository with the amount due from each, and such amounts shall be paid on or before the fourth Monday of September thereafter and without demand therefor.

XIV.

The officers of this company shall be a president, vice-president, secretary, treasurer, medical director, attorney and five trustees.

The first board of trustees are by the incorporators of this company hereby chosen and shall be Bruno Beaupre whose term of office shall be two years, William R. Merriam whose term of office shall be four years, John B. Sanborn whose term of office shall be six years, Maurice Auerbach whose term of office shall be eight years, and Charles H. Bigelow whose term of office shall be ten years and each of whom shall continue in office from the first Monday in August A. D. 1880, until his successor is duly elected or appointed and qualified and shall reside at Saint Paul in said State meanwhile and permanent removal from said Saint Paul by any trustee hereby appointed or hereafter appointed or elected shall operate as a formal resignation by him of such office. All vacancies in said board whether occasioned by death or resignation shall be filled by the remaining members of said board, but the
44 trustee so appointed shall continue in office for the unexpired term of his predecessor.

There shall be elected by the members of this company at the office thereof in said Saint Paul, on the first Monday of August A. D. 1882 and biennially thereafter one trustee which election shall be conducted and canvassed according to the by-laws of this company.

The other officers of this company shall be appointed by said board of trustees at the office of the company at said Saint Paul on the first Saturday of August A. D. 1880 and biennially thereafter,

the officers so appointed shall continue in office until their successors are duly appointed and qualified respectively.

Such board of trustees shall hold regular meetings at the office of the company on the first Monday of each month and shall have power First. To adopt and provide a corporate seal for said company, also to establish by-laws and make all rules and regulations deemed by them expedient for the management of the affairs of this company in accordance with law and not incompatible with an honest purpose. Second. To appoint the other officers of this corporation, to fix their salaries, to define their respective provinces and duties, to suspend or remove any of them for cause, and to fill all vacancies occasioned thereby or by death. Third. To establish fiscal agents in any place to be known as depositories and to define their powers and duties, also to fix their compensation.
45 Fourth. To reduce the rate of assessments for death losses as well as those for operating expenses in case the same prove greater than necessary to discharge the obligations of said company. Fifth. To amend these articles (except as therein otherwise provided) and to generally direct manage and control the business and concerns of this company.

In testimony whereof, we have hereunto set our respective hands and seals this fourth day of August in the year of our Lord one thousand eight hundred and eighty.

A. G. ALCOTT.	[SEAL.]
RUSSELL R. DORR.	[SEAL.]
C. H. BIGELOW.	[SEAL.]
M. AUERBACH.	[SEAL.]
JOHN B. SANBORN.	[SEAL.]
WILLIAM R. MERRIAM.	[SEAL.]
BRUNO BEAUPRE.	[SEAL.]
W. P. WARNER.	[SEAL.]

STATE OF MINNESOTA, } ss:
Ramsey County, }

Be it known that on this 5th day of August A. D. 1880 came personally before me Charles H. Bigelow, Maurice Auerbach, John B. Sanborn, William R. Merriam and Bruno Beaupre, W. P. Warner, A. J. Alcott, Russell R. Dorr to me well known to be the same persons who executed the foregoing articles of incorporation and then and there they respectively duly acknowledged the
46 same to be their free act and deed.

In proof whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

C. B. RICHMOND,
[SEAL.] *Notary Public, Ramsey County, Minnesota.*

Filed August 6th A. D. 1880 at 10 a. m.

FRED VON BAUMBACH,
Secretary of State.

47 To whomsoever it may concern:

Be it known that on the 18th day of April A. D. 1881 the fourth article of the articles of association of the corporation under the laws of the State of Minnesota known as the Bankers Association of Minnesota was amended by inserting in said article after the word- "fiscal year" the following provision namely

"Provided that the board of trustees may grant to any applicant time for the making of said payments or any of them, but in case time be granted and such deferred payments or any of them shall not be made as they mature, then the certificate of membership issued to the defaulting member shall thereupon become and be void; and provided further that if any member to whom time shall have been so granted shall die before the maturity of such deferred payments or any of them, then the amount thereof then unpaid shall be deducted from the amount due in such case upon such certificate, and the company shall be liable only for the residue."

That on the 9th day of August A. D. 1884 the first article of said articles was amended by the insertion therein after the word "Bankers" the word "Life."

That on the date last mentioned the twelfth article of said articles was amended by expunging therefrom the following words "First the whole amount pledged thereto by the deceased; second subject however to the proviso that such amendment shall be in force only from the time when the guaranty trust fund aggre-
48 gates one hundred thousand (100,000) dollars and shall not apply to memberships issued prior to that time.

That on the date last mentioned the fourteenth article of said articles was amended by inserting between the word "Saturday" and the word "of" in said article the following word-, namely— "after the first Monday."

JOHN B. SANBORN.
RUSSELL R. DORR.

STATE OF MINNESOTA, }
Ramsey County. }

John B. Sanborn and Russell R. Dorr being duly and severally sworn each for himself depose and say: That said John B. Sanborn is and ever since the 16th day of November A. D. 1880 has been the vice-president and chief executive officer of the corporation referred to in the foregoing certificate subscribed by him.

That said Russell R. Dorr is and during the same period has been secretary of said corporation subscribed by said affiants is true.

JOHN B. SANBORN.
RUSSELL R. DORR.

Sworn & subscribed before me this 27th day of August A. D. 1884

W. W. DUNN,

[SEAL.] *Notary Public, Ramsey County, Minnesota.*

Filed Sept. 23rd A. D. 1884 at 9 a. m.
FRED VON BAUMBACH,
Secretary of State.

49 UNITED STATES OF AMERICA:

STATE OF MINNESOTA,
DEPARTMENT OF STATE.

I, P. E. Hanson, secretary of state of the State of Minnesota, do hereby certify that I have compared the annexed copy with record of the original instruments in my office of articles of incorporation of "The Bankers' Life Association of Minnesota," as filed August 6, 1880, recorded in Book "E" of Incorporations, page 428 etc.; amended articles filed Sept. 23rd, 1884, recorded in Book "K" of Incorporations page 244 etc. and that said copy is a true and correct transcript of said record of said articles and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State at the capitol, in Saint Paul,
[SEAL.] this 20th day of August A. D. nineteen hundred and one.

P. E. HANSON,
Secretary of State.

50 COMPLAINANTS' EXHIBIT "B."

The Bankers' Life Association of St. Paul, Minnesota.

No. 22289. Age, 49.

Annual dues, $7.35; single mortuary assessment, $0.98.

This certifies that the Bankers Life Association of Minnesota? upon the written application of *Charles Schuster* of *Milwaukee* in the State of *Wisconsin* and upon the statement and warranties therein contained, which application and the answers therein made are hereby made warranties and a part of this contract, has on this 23*rd* day of *July* A. D. 1895 admitted him to one full membership in said association, and in virtue thereof he shall participate in and enjoy all the benefits conferred by said association, so long as he shall perform the duties and obligations incident to such membership according to the articles of incorporation of such association.

The said association in consideration of said application and the answers therein contained and that said member has made the guaranty deposit and payments called for by said articles, hereby covenants and agrees that said association, after the death of said member and within sixty days after due and satisfactory proof thereof shall have been furnished thereto, will pay at the office thereof in Saint Paul in the State of Minnesota, unto *his wife*
51 *Mary Schuster* if living otherwise, this certificate shall become payable, and be paid unto the executors or administrators of the estate of said deceased member in trust, however, for and forthwith to be paid over by such executor or administrators to the heirs at law of said deceased member, the sum of two thousand dollars on the express condition, however, and provided that the statements

matters and answers, made, stated and set forth in said application are all true in fact; and upon the express condition and provided that said member shall have paid all the annual dues and mortuary assessments imposed upon him during his life pursuant to said articles; and said sum to be paid from the mortuary fund of said association and the deficiency, if any, from the guaranty trust fund thereof and provided that this certificate shall become null and void if death occurs from self-destruction within two years from this date, said member being sane or insane, or if death shall have been caused by the hand of justice or in consequence of the violation of any law; and provided further, that no action shall be brought or sustained upon or under this certificate unless commenced within one year after the day of the death of said member.

In testimony whereof said corporation has caused the [SEAL.] names of its president and secretary to be signed and its corporate seal to be affixed.

COURTLAND TAYLOR, *President.*

DOUGLAS PUTNAM, *Secretary.*

52 EXHIBIT "B."

The Bankers' Life Association of St. Paul, Minnesota.

1880—What has been accomplished in fifteen years—1895.

The strongest assessment company in the United States.

The following table gives the relative strength of seven of the leading assessment companies on December 31, 1894, as shown by the official figures from the report of the insurance department of the State of Michigan.

Name of company.	Location.	Net assets.	Insurance in force.	Am't of assets to each $1,000 in force.
The Bankers Life Association	St. Paul	$619,751.52	$23,486,000	$26.39
Hartford Life and Annuity Insurance Co.	Hartford	1,451,785.62	87,336,500	16.62
Mutual Reserve Fund Life Association	New York	3,774,120.48	293,366,106	12.87
Massachusetts Benefit Association	Boston	1,180,504.87	106,889,455	11.04
Covenant Mutual Life Association	Galesburg	632,046.31	98,440,375	6.42
Northwestern Masonic Aid Association	Chicago	763,216.75	141,154,500	5.40
Bay State Beneficiary Association	Westfield	263,672.13	46,111,175	5.72

53

Amount of assets to each $1,000 of insurance in Bankers' Life Association. $26.39
Average assets to each $1,000 of insurance in the six other companies.... 10.43

The ratio of net assets to insurance in force is the important consideration in making a choice between different companies. If the amount of net assets be urged in favor of a company, the amount at risk must also be determined. With these two items fixed, the relative strength can be shown by a simple mathematical calculation. The above table is strictly accurate, and can be proven by official reports in this office. It shows, beyond possibility of refutation, that among the leading assessment companies of the United States, the Bankers Life Association of St. Paul heads the list in actual security to policy holders. Furthermore, these assets are principally composed of Government bonds and cash, immediately convertible in any case under the laws of this State for the benefit of every member. They can never be distributed in any manner except for the benefit of all, share and share alike. This is a strictly mutual company, in which the officers and trustees have no control over the assets, except to invest and guard them for the direct interest of all the members.

C. H. BIGELOW,
President St. Paul Fire and Marine Insurance Co.,
WM. R. MERRIAM,
President Merchants' National Bank,
M. AUERBACH,
President Union Bank,
GEN. B. SANBORN,
Attorney-at-law,
} *Trustees.*

54 *Comparative Statement.*

Organized in 1880.	Result of 10 years to Dec. 31, 1880.	Following 4 years to Dec. 31, 1894.	Increase 4 years.
U. S. registered bonds	$176,175.00	$395,500.00	$219,325.00
Cash on hand	41,443.18	91,970.41	50,537.23
Loans and securities	1,000.00	27,700.00	26,700.00
Guaranty notes (not due)	51,826.75	103,922.50	52,095.75
All other items	991.35	658 61	332.74
Gross assets	$271,436.28	$619,751.52	$348,315.24
Insurance in force	11,814,000.00	23,480,000.00	11,666,000.00

The central feature of the Bankers Life Association is the guaranty trust fund, which enables the company to discharge its contracts in full, whether members pay or fail to pay. So long as a member meets his own payments promptly he cannot suffer in consequence of the negligence of others, for this fund will protect him. It has the largest amount of assets for each $1,000 in force that has ever been created by any of the leading companies upon the natural premium plan. It is the only life insurance company

of any kind that invests its funds exclusively in U. S. bonds for the protection of its members.

55 Mr. Chas. Schuster, Milwaukee; age, 49.

For $2000 insurance in the Bankers Life Association, St. Paul, Minn. the estimated maximum cost will be $36.75. payable as follows:

April.	Mortuary call 10 at 98c	$9.80
July.	Mortuary call 10 at 98c	9.80
Sept.	Operating expenses (annual dues)	7.35
Dec.	Mortuary call, 10 at 98c	9.80
	Total	$36.75

Or

Total cost per $1,000	18.38

Your payment to the guaranty trust fund will be $49.00, payable in two notes of $24.50 each, due in one and two years respectively (without interest). This payment is made but once in a life time, and is invested exclusively in U. S. registered bonds. It increases $100,000 with every 2,500 added to the list. The face of the policies is guaranteed by this fund.

The cash premium is $31.85, *payable when application is taken.*

Note.

Your particular attention is directed to the strong financial position of the company and to its common sense plan which especially commend it to the patronage of bankers and business men
56 generally. In the relation of assets to liabilities it stands pre-eminently at the head of the natural premium companies and mutual life associations.

A strong indorsement by a leading insurance journal, New York Spectator, April 11th, 1895, says:

"The Bankers Life Association of St. Paul stands at the head of "reliable assessment companies of the country, and the popularity "of its plans is attested by the rapid increase in business shown dur-"ing the past four years. In that time it has about doubled its "membership and more than doubled its gross assets with the re-"sult that it is to-day in a stronger financial condition than ever be-"fore and is the strongest assessment company in America, finan-"cially. The Bankers' possesses gross assets to the amount of "$619,750, over $400,000 of which consists of United States bonds on "deposit with the insurance department of Minnesota for the pro-"tection of its policy holders. With such a record the association "should have no difficulty in materially adding to its business."

(Stamped on face:) C. E. Secor.

57 COMPLAINANTS' EXHIBIT "C."

The Bankers Life Association of St. Paul, Minnesota.

No. 27873. Age, 46.

Guaranteed Option Policy.

The Bankers Life Association of Minnesota in consideration of the sum of *sixty five dollars, to be paid on the delivery of this policy*, or before it shall take effect, and of the further payment of an equal sum, in advance, on the *fourteenth day of October* in each and every year during the continuance of this contract,

Hereby insures the life of *Hawley A. Newkirk* (herein designated the insured) of *Chicago* in the State of Illinois, and

Hereby promises, upon surrender of this policy, to pay *two thousand dollars* to *his mother, Abigail E. Newkirk* if living at the time of the death of said insured, otherwise to the executors or administrators of the insured, at the home office of the association, in the city of Saint Paul, Minnesota, within thirty days after receipt and approval of proofs of death of said insured, during the continuance of this policy;

58 Subject, however, to, and conditioned upon, the following stipulations, agreements and conditions, viz: That all the special advantages, privileges and provisions stated on the following pages, and everything stated or contained in the application for this policy, are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In witness whereof, the president and secretary of the said Bankers Life Association of Minnesota have hereunto set their hands, and caused the seal of the said association to be hereunto affixed at the aforesaid city of Saint Paul, this *fourteenth* day of *October* 1899.

[SEAL.] COURTLANDT M. TAYLOR, *President.*
DOUGLAS PUTNAM, *Secretary.*

Special Advantages, Privileges, and Provisions.

Privilege of travel and residence.

First. The insured, under this policy, is privileged to travel or reside in any part of the world.

No personal liability.

Second. No personal liability to make any involuntary cash payment whatever is incurred by holding a policy in this company. Any member is free at any time to cancel any past, present or future indebtedness to this company, by surrendering this policy at the home office for cancellation.

Incontestability.

58½ Third. If this policy continue in force for three years, it will be incontestable after the death of the insured provided, premiums are paid, and the provisions as to the age and military and naval service are observed.

Occupation.

Fourth. The insured under this policy may engage in any occupation, but, if in the army or navy, must obtain a permit, as hereinafter provided.

Beneficiary may be changed.

Fifth. The beneficiary or beneficiaries under this policy may be changed by the insured at any time during its continuance—provided the policy is not already assigned—by filing with the company the written request of the insured and beneficiary, duly acknowledged, accompanied by this policy for indorsement; such change, however, to take effect only on the indorsement of the same on the policy by the company.

The insured may, however, resign the right to change beneficiaries—either temporarily or permanently—by filing with the company a written waiver, duly acknowledged, and accompanied by this policy.

Grace in the payment of premiums.

Sixth. After this policy has been three months in force, a grace of one month will be allowed in payment of premiums, subject to an interest charge at the rate of six per cent. per annum for
59 the number of days during which the premium remains unpaid. During the month of grace this policy shall remain in force and the unpaid premium, with interest as above, shall remain an indebtedness to the company which will be deducted from the amount payable under this policy if the death of the insured shall occur during the month.

Privilege of reinstatement.

Seventh. After forfeiture for non-payment of any premium, this policy may be reinstated at any time by the insured's making written application, accompanied by evidence of good health satisfactory to the company, and paying overdue premiums with interest at the rate of six per cent. per annum.

Eighth. Table of loans, paid-up policies or of extended insurance, under the conditions specified below:

At end of	1. Loans.	2. Paid-up policies.	3. Extended insurance.
3rd year	$90	$136	2 years 2 months.
4th year	$124	$204	3 years 1 months.
5th year	$160	$268	3 years 11 months.
6th year	$196	$332	4 years 7 months.
7th year	$234	$394	5 years 3 months.
8th year	$276	$454	5 years 9 months.
9th year	$318	$512	6 years 3 months.
10th year	$358	$570	6 years 7 months.
11th year	$398	$628	6 years 11 months.
60 12th year	$438	$682	7 years 2 months.
13th year	$480	$736	7 years 4 months.
14th year	$522	$790	7 years 6 months.
15th year	$564	$838	7 years 7 months.
16th year	$602	$888	7 years 8 months.
17th year	$640	$936	7 years 8 months.
18th year	$678	$982	7 years 8 months.
19th year	$714	$1026	7 years 7 months.
20th year	$750	$1072	7 years 6 months.

On application to the company at the end of the 20th year this table will be extended for 20 years more.

Loans.

Ninth. After this policy shall have been in force three years the company will, during the then current month of grace; or upon the fifth, tenth, fifteenth or twentieth anniversary of its issue, loan hereon, under the terms the company's loan agreement then in use, a sum or sums the total of which, with any other indebtedness, shall not exceed the loan value of the policy as specified in the above table, upon condition that at the time of making such loan the policy shall be duly assigned to the company as the sole security
61 for such loan; that the premium for the next year be paid, and that interest at the rate of six per cent. per annum on said loan shall be payable annually, in advance. At other periods if approved by the board of trustees the company will loan, on similar terms, the amounts shown in the above table.

Surrender values.

Tenth. This policy cannot be forfeited after it shall have been in force three full years, but will continue in force as hereinafter provided.

First. If any subsequent premium is not duly paid, the company will, without any action by the insured, continue the insurance for the amount shown in column (2) of the above, less the reversionary value of any indebtedness on this policy computed according to the combined experience table of mortality, with interest at the rate of five per cent. per annum, and upon surrender of this policy will

issue its paid-up policy at the death of the insured, in accordance herewith; or

Second. If any subsequent premium is not duly paid, and if this policy is surrendered while in full force, the full insurance under this policy will be extended during the term provided in column (3) of the above table, provided there are no loans or indebtedness outstanding; and provided also that in case death occurs within three years thereafter, all premiums that would have become due hereon shall be deducted from the amount otherwise payable by the company.

62 Third. The insurance provided for in the two preceding clauses shall be based upon completed insurance years only, and shall be subject to the conditions of this policy (but without further payment of premiums and without loans or participation in surplus), and to the provision that the accumulated funds of the company, as require- by statute, shall at no time be less than the sum of one periodical or stipulated payment by all the members, and not less than $100,000.

Reserve, etc.

Eleventh. The company agrees to hold for this policy and each similar policy the full net reserve computed according to the combined experience table of mortality, on the basis of four per cent. interest, provided, however, that if "*unexpected losses and expenses* shall be found to have reduced the funds derived from such policies below the amount of said reserve, the company shall have the right to apportion the deficiency ratably against this and each similar policy in proportion to its reserve, and the amount so apportioned against each policy shall be an indebtedness thereon, bearing interest at four per cent. per annum until paid off by dividends or otherwise.

Twelfth. In computing the reserve to be held hereon, it is agreed that during the first year succeeding the date hereof, this contract shall be considered as a one year term policy, and thereafter

63 it shall be considered as a whole life policy issued at the expiration of said term.

Thirteenth. Notice of each and every payment due on this policy is given and accepted by the delivery of this policy, and any further notice required by any statute or otherwise is expressly waived.

Fourteenth. All premiums are due and payable at the home office, unless otherwise agreed in writing, but may be paid to agents in exchange for receipts signed by the president, vice-president or secretary, and countersigned by such agents. This policy shall not take effect until the first premium is paid during the life and good health of the insured. If any premium, or any note given for premium, is not paid on or before the day when due, this policy shall become void, and all payments previously made shall remain the property of the company, except as hereinbefore provided.

Fifteenth. If it is found that the age of the insured was understated

in the application on which this policy was issued, the amount payable under this policy shall be such proportion of the amount of the policy as the premium bears to the *required* at the true age. Any indebtedness to the company, including any balance of the premium, for the current policy year not yet due, will be deducted in any settlement of this policy or of any benefit thereunder.

Sixteenth. Any assignment of this policy must be made in
64 duplicate and both sent to the home office, one duplicate to be *returned* by the company and the other to be returned. The company will not assume the responsibility for the validity of any assignment.

Seventeenth. The insured shall not engage in military or naval service unless a written permit shall have been previously obtained and provision made for the payment of additional charges therefor, in accordance with then existing rules, regulations and requirements of this company. In case of death during or after military or naval service without such permit, only the full net reserve for the policy will be payable.

Eighteenth. This policy does not insure against the death of the insured caused by his own hand or act, while sane or insane during the first three years after the date hereof.

Nineteenth. No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying any premium, to waive any forfeiture, or to bind the company by making any promise or making or receiving any representation or information. These powers can be exercised only by the president, vice-president or secretary of the company, and cannot be delegated. No suit or action against this company for recovery on account of the death of the insured shall be sustained or commenced in any court of law or equity, unless commenced within one year from the date of the death of the insured. The present and future articles of incorporation and by-laws of this company are hereby made a part of this policy.

65 # 27873.

Application for Exchange of Policies in the Bankers Life Association of Minnesota.

I hereby make application to the Bankers Life Association of Minnesota for exchange of amy life insurance policy, in accordance with the provision of its by-laws; and, as a part of my application, make the following statements:

1. My name in full is Hawley A. Newkirk.
2. The date of my birth is May 28th 1853.
3. My age, counting to nearest birthday, is 46.
4. My post office address is 1442 Monadnock bldg., in the city of Chicago State of Ills., to which notices and communications may be sent.

5. I now hold certificate of membership issued upon my life by the Bankers Life Association of Minnesota, as follows:

Number of certificate.	Date of certificate.	Amount of certificate.	Cash paid to guaranty trust fund.
19722	Apr. 24th 1894	2000	41.00
.....	.....	.....	.....
.....	.....	.....	.....

6. Certificate has been in force 5 years 5 months and 19 days.

7. I desire to surrender said certificate and exchange it for a guaranteed option policy in the form now issued by your
66 company, as follows:

a. Amount of new policy, $2000

b. Premium to be paid annually.

c. Amount of each annual payment, $65.00

8. And I request that the sum of $63.55 may be allowed me for said surrender ans in part payment of future premiums on said policy, and that the same be distributed as follows:

$21.19 on the premium due now, reducing the amount of net cash payment to $43.81

$21.18 on the premium due Oct. 13th 1900 reducing amount of net cash payment to $43.82

$21.18 on the premium due Oct. 13th 1901, reducing amount of net cash payment to $43.82.

63.55

As a condition to my procuring said exchange and receiving said policy hereby applied for, I, the undersigned applicant, do hereby warrant to be true all statements contained in my original application for said certificate and any application for reinstatement, and make the same a part hereof, and agree that the same shall apply to and become a part of said guaranteed option policy; and I do hereby irrevocably consent that article ten of the articles of incorporation of the Bankers Life Association of Minnesota, may at any time be changed and amended so that the same when amended and changed shall read as follows:

67 "*All amounts paid to this company to secure payments for death of its members shall be used only for that purpose*, and meanwhile shall be invested in such securities as are authorized by the insurance laws of the State of Minnesota. ALL interest on such securities shall only be used to pay death losses."

Should this application be accepted, and my membership thereunder consummated, I do thereupon hereby constitute and appoint the board of trustees of said The Bankers Life Association of Minnesota, or a majority thereof, my lawful proxy, to represent me and to cast any and all votes or ballots which I shall be entitled to cast at

any or all of the general or special meetings of the members of said association.

Witness my hand and seal this 13th day of Oct. 1899

HAWLEY A. NEWKIRK. [SEAL.]

[SEAL.]

Signed and sealed in presence of——
Name of agent, F. C. BARNARD.

The Bankers Life Association of Minnesota, St. Paul, Minn.

No. 27873. Amount, $2000.

Insurance on the life of Hawley A. Newkirk.

68 COMPLAINANTS' EXHIBIT "D."

Committee's Report to Members of the Bankers Life Association of Minnesota.

OCTOBER 2D, 1900.

To the policy holders of the Bankers Life Association of Minnesota:

Your committee, appointed at the annual meeting of the association held on August 6, 1900, beg to report as follows:

This committee was appointed under the following resolution passed at said meeting:

"That a committee of five be appointed for the purpose of investigating the affairs and policies of the company; the integrity of the trustees and officers and the general management of the company; and thereupon publish their report and mail a copy to each member; the purpose being to advance the welfare of the company and all its members."

The following constituted the members of the committee elected by the meeting with power to fill vacancies:

Hon. L. W. Collins of St. Cloud, Minn.
Jacob Stone of Minneapolis, Minn.
A. F. Foster of Litchfield, Minn.
J. H. Long of Mankato, Minn.
John Caulfiedd of St. Paul Minn.

69 At the first meeting of the committee, Hon. Albert Schaller was elected in place of Hon. L. W. Collins, who found it impossible to serve.

The committee found its work naturally dividing itself into the following subjects:

1. Legal;
2. Financial;
3. Insurance;
4. Administrative;

Which will be taken up in the order named.

1. Legal.

Under this head we considered the legality of the several amendments to the constitution of this association, its reincorporation, and the change of its manner of doing insurance business; but your committee believed that it was to the interest of the association and its members that a prompt report be made, and in consequence thereof could not take time to make a thorough examination of the law bearing on these questions, but on these matters the officers of the association assure us that they have consulted, and taken the advice, of such eminent lawyers as Hon. C. W. Bunn, counsel for the Northern Pacific Railway Company; Hon. H. R. Bigelow, formerly of the firm of Bigelow, Flandrau & Squires, and Hon. T. T. Fauntleroy, whose several opinions state that the proceedings in these matters were, and are, in all things, legal and proper;
70 and these acts of the officers in these matters were duly approved by Attorney General H. W. Childs in his official capacity.

We therefore refer the members of the association to those opinions which are in writing and on file in the office of the association.

2. Financial.

In connection with this and the administrative features of this report, the firm of Smith Reckitt & Clark, certified accountants of New York, was employed by your committee to assist them.

The cash in hand was counted by us, and each bank was visited, so as to verify the balances as exhibited by the bank pass books. The latter balances were found to agree with the balances exhibited on the books of the association, taking into consideration outstanding checks.

The securities were all examined and found in order, and the number of each bond was found to agree with those listed on the books of the association at the time of purchase, indicating that these bonds had been continuously in the possession of the association since their purchase.

The securities of the association are, and have been, kept in the safety deposit vaults of the National German American Bank of St. Paul.

We found that several years ago three loans were made by the trustees to members of their board. While the association sustained no loss in such transactions, yet your committee was of the
71 opinion that such practices were improper, and at their request a by-law was adopted, prohibiting the loan of any funds of the association to any trustee, officer, employé or agent thereof, with, or without security.

We find the assets and liabilities of the association correctly stated in the printed report of the secretary, of date, August 31, 1900, and heretofore mailed by him to all of the members.

We think it a matter of congratulation to the members of the

association, and also evidence of the able financial management by its officers, that up to the present time no losses have ever been sustained on account of any investment of the funds of the associa tion.

3. Insurance.

Since the organization until February 7, 1899, the insurance business was carried on entirely on the assessment plan; members' contracts calling for an assessment of a certain amount to be paid by each certificate holder for each death reported and proved.

Since the first five years of the company's history, assessments have not been made for the full number of death losses, as one assessment always brought in much more than enough to pay one death loss. Since 1892 the assessments have been uniform, viz: assessments made for thirty (30) death losses each year, though the death losses each year during said time averaged 124 certificates.

The ratio of death losses to number of policy holders gradually increased until 1898, and thereafter, thirty assessments were not sufficient to raise money enough to pay the losses. Assessments were not enlarged but the deficiency was paid out of the surplus then existing in the mortuary fund derived from former assessments.

72 It was found to be the concensus of opinion by the best insurance talent of the country that assessment insurance could not be permanently carried on with successful results. For this reason the officers of the association determined to give its members an opportunity to change their policies from assessment plan to level, or stipulated, premium plan. In order to do this on December 24, 1898, the articles of the association and the by-laws, were amended so that a guaranteed option policy could be issued on the stipulated premium plan, the annual premium payable in advance, and base upon the actuaries' combined experience table of mortality, and providing for the transfer of assessment members from the old plan, or class A, to the new, or stipulated premium plan, now called "class B," and at the option of such certificate holders.

For further safety, and to comply with insurance laws, the assessment clause was retained.

All experience shows, however, and it is the opinion of your committee, that the premium charged will be sufficient to pay all losses and expenses, and to provide the proper legal reserve, and that the assessment clause will never have to be enforced.

The moneys received from class A, or assessment members, and the premiums paid by class B, or stipulated premium class, are kept in entirely separate funds for the exclusive benefit of mem-

73 bers of the respective classes, and the expenses of the association are apportioned to each class on an equitable basis.

The amount of insurance in force at close of August 31, 1900, was $19,292,500, of which $11,438,000 was assessment insurance, and $7,854,500 on the stipulated premium plan.

4. Administration.

In order to ascertain with accuracy the present condition of the books and the methods of carrying on the business of the company, this committee deemed it wise to avail itself of the services of Smith, Reckitt & Clark, before mentioned, who were directed to make a thorough examination of the books for the year ending August 31, 1900, to check all vouchers and to report in full the results of their investigation.

It was deemed impracticable to carry this work farther back than one year, and so far as the accounts of the company are concerned, this committee can only inform you as to the methods employed during that time.

The report of the accountants is divided into the two following heads: 1st, audit of books and vouchers; 2d, system of accounts.

Audit of books and vouchers.

This work involved the verification of the following books of the company:

General ledger;

Journal;

General cash books; mortuary assessment cash books

74 The entries of receipts from assessments as shown in the mortuary assessment cash book were compared with the amounts credited on the general cash book and found to agree.

All postings from the journal and cash book to the general ledger accounts were checked, and found in order.

General cash book disbursements.

All entries for expenditures were compared with the checks issued for same and were found correct. Where the expenditure was made in currency, vouchers were found and examined in every instance, with the exception of payment for collection and exchange. The payments on this account amount to $2,084.30, most of which was deducted by the banks from remittances made through them.

All papers relative to death losses were carefully examined and found in order.

The present system of accounts and vouchers is exceedingly cumbersome, involving a large amount of unnecessary labor, but we are assured that a new and simpler system is about to be inaugurated which will largely reduce the expense of the office.

The different funds held by the association are as follows:

1. Guaranty trust fund; 2. Mortuary fund.
3. Operating fund; 4. Contingent fund.
5. Premium fund;

6. Transferred premium credit fund.

75 The two first funds belong to class A, which is in connection with business done on the old assessment plan. The two latter belong to class B, which is in connection with business done under the new system.

We find on the books of the company that the guaranty trust fund is subdivided into two funds namely, guaranty trust fund and mortuary reserve fund.

The articles of incorporation do not contemplate a mortuary reserve fund, and in our opinion no distinction shoud be drawn *ob* the books of the company. The guaranty trust fund, as is well known, can be used for no other purpose than to make good claims for death of members under the assessment plan.

The question having been raised whether the so-called "mortuary reserve fund" could be used for any purpose other than for the payment of death losses in class A (assessment policies), it was promptly decided in the negative by the officers of the association.

The guaranty trust fund, including the so-called mortuary reserve fund, now amounts to $581,150.86. This, it should be clearly understood, can be used for no other purpose than for the death claims of members under the assessment plan.

Mortuary fund.

This fund is created by assessment of members to meet death losses. During the last year the death losses exceeded the amount of assessments made by a considerable sum.

76 It appears, therefore, that the time has arrived when it will be necessary for the association to increase each member's assessment, or draw on the guaranty trust fund to meet death losses. It is fair to suppose that the death rate will not continue so low as heretofore. Under the circumstances we would recommend that the actuary of the association calculate what increase of assessment is necessary so that when the last member of class A (old assessment plan policy) dies, the money to meet his claim will be on hand; and also, that at that time the guaranty trust fund shall have been completely utilized for the purpose for which it was created.

Premium fund.

This is made up of premiums on policies written under the new plan, and is subject to charges for commission, medical examinations, and its proper proportion of the running expenses of the association, since the new policies were written. The consulting actuary of the association at the close of the present year will make the charges for the proper proportion of these items.

Operating fund.

To this fund has been charged the entire expenses of the company, both under the old and new systems. When the actuary makes the calculation above referred to, it will receive a large credit from the premium fund.

Contingent fund.

77 This fund is created by transferring from the operating fund at the close of the year such balance as remains after having met all expenses. The interest and premium on sales

of securities, except interest on United States bonds, are also credited to this fund.

In looking over the disbursements we note that certain fees for legal services, and the salary of consulting actuary, for the years 1898 and 1899, have been carried forward on the books instead of being charged off to operating fund, and closed. Of course this method of bookkeeping does not affect the correctness of any of the association's published statements. We think that the proper plan will be that the entire expenses of the current year should be balanced and ruled off the books.

We find that the contingent fund has been drawn upon *during the last year* for the purpose of allowing policy holders under the new plan, who have changed from the assessment plan, credits on their premiums, *the actuary having* decided that a proper allowance to each policy holder thus transferred consists in *repaying* the member an amount equal to *his contribution to the guaranty trust fund*, with ten per cent. interest for each year he has been a member for the first ten years, and then five per cent. interest for each year over ten years. During the past twelve months *$120,137.50* has been used in this way, which leaves $39,981.63 to the credit of this fund.

78 We are assured by the management that the future income of the contingent account will be sufficient to meet future demands from this source.

In conclusion your committee would express their appreciation of the courteous treatment and valuable assistance which they have received at the hands of the officers of the association. Every facility has been afforded us for a full investigation of the affairs of the association.

We are satisfied from our investigation that the trustees and officers of the association have conducted its affairs with the utmost integrity, and having solely in view at all times the best interests of the association and its members.

Respectfully submitted,

JACOB STONE.
A. F. FOSTER.
JAY HENRY LONG.
JOHN CAULFIELD.
ALBERT SCHALLER.

St. Paul, Minn., October 2d, 1900.

79 COMPLAINANTS' EXHIBIT "E."

Report of the Insurance Commissioner.

Liens as assets.

The method adopted by some of the companies which fromerly did business on the assessment plan for substituting level premium policies for their old assessment certificates, brought to the front an

important yet delicate question regarding the treatment which would be accorded to the so-called assets created in the process of making the exchange without representing real values or genuine transactions. The plan devised and adopted for effecting such substitutions was as follows: The old assessment certificate was taken up by consent of its holder, and a new whole life policy issued ostensibly for a like amount. The rate on the new contract was made the same as called for by the company's table for the age when the applicant took out his assessment certificate, not the rate at attained age. If, for example, a $1,000 certificate had been issued at age forty, and been in existence ten years, making the insured fifty years of age, the new level premium policy ostensibly for $1,000, would be written for a rate for age forty instead of age fifty. This advantage given by the company to the insured was offset by a requirement that the insured sign an interest-bearing lien against
80 the policy for an amount equal to the reserve that would have accumulated on the policy had it been issued originally as a whole life contract at a level rate. In case this reserve was $200, the actual amount of insurance in force at the time the new policy was issued was $800. Its regular cost was fixed at the level premium rate at age of original entry, plus interest on the lien.

Transactions of this kind were carried on so extensively that, out of $12,000,000 of assets claimed by one company, some two-thirds of the amount represented liens of this character. Manifestly they are not available for raising funds for the general purposes of the company, but, being severally specific liens against specific policies, are only available as against their respective policies, and can never be collected otherwise. Moreover, they do not represent in any degree actual funds paid to the company and loaned to the insured. Thus they are not in a proper sense policy loans, which are based on actual transactions, in which insurance funds are borrowed by the policy holder to the limit of his reserve accrued on his policy, if desired, and secured to the company by his policy as collateral. It is obvious that from a business standpoint these liens, while in certain contingencies they may be used as an offset to claims, lack the general availability of such resources of a life insurance company as are generally denominated and allowed as assets.
81 They are, therefore, distinctly inferior in that respect. Like circumscribed resources would not be selected, it is safe to say, by any business house if it could be avoided; and, if necessity compelled their acceptance in liquidation of a debt, the house acquiring them would be at a great disadvantage without an abundance of other assets. Moreover, availability not for a single specific purpose, but to meet the varying and somewhat uncertain needs of a company, is one of the elements that the Massachusetts statutes, w-th a wise and businesslike foresight, declared must be inherent in funds claimed as assets, otherwise they must be disallowed by the commissioner.

There are numerous other reasons, from partly a general business and partly an insurance stand-point, which might be presented to

show the questionable value of such liens, as compared with the funds usually held by life companies; but it is unnecessary to state them in detail. Let it suffice to say that they were sufficient to raise the additional question whether, from a legal stand-point, the status of these liens is any more reassuring than from a business stand-point. This was properly a question for the attorney general. It was laid before him, and advice asked as to whether these liens should be allowed as assets and the policies be valued for their face, or the policies be valued for their face less the amount of their respective liens, and these liens be disallowed as assets. His reply was as follows, and the department has been governed accordingly in its treatment of all policies issued with such a lien attach-
82 ment:—

BOSTON, *Feb.* 1, 1901.

Mr. Frederick L. Cutting, insurance commissioner.

DEAR SIR: Your letter of January 4, after quoting St. 1900, c. 363, providing that the insurance commissioner shall annually compute the reserve liability of insurance companies and examine the financial status of such companies, states that certain insurance companies which, under the laws of Massachusetts, have been compelled to change from assessment to level premium companies, have attempted to meet the difficulties arising from such change in the following manner:—

No reserve was accumulated during the continuance of the assessment policies, and if such policies were to be exchanged for level premium policies, with the rate of premium fixed as of the age when the original policy was taken out, the companies would not have, and could never accumulate, a reserve sufficient to protect the policy under the requirements of the Massachusetts statutes. Accordingly, at the time of such exchange they induced the insured to enter into an agreement by which the company was given a lien upon the new policy for the amount of the reserve which they ought to have on hand, regarding the level premium policy as having been taken out at the time the assessment insurance was placed.

The result of this arrangement is that a policy, for example, which is nominally for $1,000. has charged against it, by the assent of the insured, a sum of money (say, for example, $300) representing
83 the amount of reserve which the company should have on hand, assuming it to have been taken out when the assessment insurance policy was originally taken out.

The question submitted by your letter is, whether you shall, as contended by such companies, compute the amount of insurance outstanding at the face value of the policy, and include among the assets the liens in question.

The face value of the policy is reduced by the exact amount of the lien so created; so that, in the supposed case above stated, it becomes, in effect, a contract for $1,000, less $300. This obviously is nothing more than a contract to pay $700. The policy should,

therefore, be regarded, for the purposes of your valuation as a policy for $700. It follows that the amount of the lien is not an asset in the hands of the company, and is not to be credited to it as such.

It is contended by the companies that the transaction in question is, in effect, a loan upon the security of the policy, and that it is to be so regarded in your computation. The difference, however, between such loans and the arrangement in question illustrates and confirms the soundness of the views I have expressed. The real face of a policy of insurance is the amount which the company would be bound to pay if the insured should die the day the policy is taken out. This amount is not varied by subsequent arrangements between the insured and the company. If, therefore, after the
84 policy is written and delivered, the company makes a loan, it does not diminish the face of the policy and has no effect upon the valuation.

But, under the arrangement in question, the policy in its inception is insurance, not for the face value of the policy, but for the net amount after deducting the amount of the lien. Real loans are assets, because the company's liability is diminished by the amount of each loan; but these alleged loans are not assets, because the company was never liable for them.

I am of opinion, therefore, that it is your duty to decline to inflate the two sides of the account by taking the face of the policy, upon the one hand, and regarding the lien as an asset, upon the other hand; but that you are to regard the contract what it is in fact, to wit, insurance for the face of the policy less the amount of the lien created thereon.

Very truly yours,

HOSEA M. KNOWLTON,
Attorney-General.

Respectfully submitted,

FREDERICK L. CUTTING,
Insurance Commissioner.

85 COMPLAINANTS' EXHIBIT "F."

Opinions of Attorney General on Assessment Laws.

Opinions of the attorney general upon the provisions of the law governing mutual, beneficiary, and fraternal corporations, societies, orders, and associations providing insurance on the assessment plan.

STATE OF WISCONSIN, DEPARTMENT OF INSURANCE,
MADISON, *May 15th*, 1897.

To whom it may concern:

The following decisions have been rendered by the attorney general upon the provisions of the law governing mutual, beneficiary and fraternal corporations, societies orders and associations provid-

ing insurance on the assessment plan, and the attention of all associations and organizations licensed under the provisions of chapter 175, Laws of 1895, *are* hereby called to the same. * * * No. 3. "You ask, "do not the provisions for reserve and emergency fund accumulations, in chapter 175 of the Laws of 1895, require that the order or association shall keep individual accounts with its members,
and credit to such accounts the equitable portion of such re-
86 serve or emergency fund; and can such reserve or emergency
fund be used or encroached upon except in the *pro rata* or equitable proportion as each member having such interest is liable for his proportionate share in meeting an emergency."

Chapter 175 (see section 4) only requires such associations to maintain a reserve or emergency fund of an amount not less than the proceeds of one death or disability assessment or periodical call on all policy or certificate holders thereof, and at least equal to its maximum certificate or policy. If an association only seeks to maintain an emergency fund to the extent required by said section 4, we are of the opinion that it is not necessary to keep an individual account with each member, and credit to the account of each member the equitable proportion of such emergency fund.

As indicated in another letter of this date, addressed to yourself, we are inclined to think, however, that section 11 of chapter 418 of the Laws of 1891, is still in force. The latter section provides for the accumulation of a reserve fund, and declares that such reserve fund "shall be used only to guarantee benefits or be applied in payment of future assessments, or otherwise used for the promotion of the object or objects for which said funds are specially provided and set apart."

Where an association accumulates a reserve fund such as that
contemplated by said section 11, we are of the opinion that the
87 order or association must keep an individual account with
its members, and credit to such accounts the equitable portion of such reserve or emergency fund; and that such reserve or emergency fund cannot be used or encroached upon except as indicated in your question. If, under such circumstances, an individual account is not kept, or if the reserve or emergency fund is encroached upon otherwise than is indicated, it will amount to a fraud upon the members whose interests are affected."

No. 4. "You inquire whether an assessment life association licensed to transact business in Wisconsin under the provision of chapter 175 of the Laws of Wisconsin for the year 1895, may issue limited payment policies, endowment policies, policies promising a cash surrender, extended or paid-up insurance policies.

In order that such associations may be enabled to fulfill definite and absolute agreements such as those referred to by you, it is self evident that they must collect at certain times certain definite premiums or assessments, so as to accumulate a definite guarantee or reserve fund, the same as stock companies. This would be wholly inconsistent with the flexible assessment principle upon which these

associations are founded; and certainly it does not come within their province.

Chapter 418 of the Laws of 1891, which was the law in force regulating this character of insurance associations prior to the enactment of chapter 175, authorizes such associations to pro-
88 vide by by-laws for the accumulation of a reserve or guarantee fund, which might "be used only to guarantee benefits or to be applied in payment of future assessments, or otherwise used for the promotion of the object or objects for which said fund are specially provided and set apart." See section 11.

Chapter 175 which revises the subject matter of said chapter 418, contains no provisions similar to that of section 11 of said chapter 418. At the same time it only purports to repeal acts and parts of acts inconsistent with the provisions of said chapter 175. See section 22 thereof.

It cannot be said that section 11 of said chapter 418 is necessarily inconsistent with any of the provisions of chapter 175. Hence it is quite likely that section 11 of said chapter 418 was not repealed by said chapter 175.

See Lewis *vs.* Stout, 22 Wis., 234.
Simmons *vs.* Bradley, 27 Wis., 689.
Curry *vs.* C. & N. W. Ry. Co., 43 Wis., 665.

Certainly it is true that such associations are authorized by law in some of the States to accumulate money for reserve purposes in a manner similar to that provided for in said section 11. Where such associations are authorized to collect funds in addition to what is necessary in order to pay current claims and expenses, they may certainly be permitted to pay to a certificate holder, upon the surrender of his certificate, whatever excess may be equitably due him at the time of the surrender of such certificate; in other
89 words, to pay to the certificate holder a cash surrender of an uncertain amount.

They may likewise apply the equitable excess due a member at the end of a certain period, toward extending his insurance, until it shall be absorbed by his *pro rata* of assessments. This would be extended insurance for an uncertain period of time. It is, of course, also possible that such excess may be applied toward carrying a reduced amount of insurance during the member's life, in the nature of paid up insurance, provided the amount of such insurance be left wholly definite.

Such associations are not capable of paying a fixed endowment, nor of fulfilling the terms of a limited payment policy, free of future liability to assessment. Where they are authorized to accumulate a reserve, they may agree that the excess at the end of a certain period of years, whatever it may amount to, shall be paid to the certificate holder; and also that such excess at the end of a certain period, may be applied in carrying on the insurance of the member; but the right to levy future assessments when such excess shall have been used up, must be reserved, and such right to levy future

assessments should appear plainly in the policy and literature of such associations. Such associations ought not to be permitted to make agreements of the character referred to, even to the extent mentioned in this letter, unless they are authorized, and do, accumulate a reserve fund sufficient for the fulfillment of such agreements.

90 We are frank to say that all such agreements appear to us to be foreign to the true scope of assessment insurance associations; and yet we cannot advise you that you may legally refuse to license associations of this character, authorized to accumulate a reserve, from entering into agreements of this kind to the extent that we have indicated in our letter. We are of the opinion, however, that you have full authority to investigate the character of the agreements made by such associations in their policies, and to confine them strict y within the proper limit."

The section 11 of chapter 318, Laws of 1891, referred to in opinions Nos. 3 and 4, is as follows:

"SECTION 11. Any corporation, society, order or association transacting business under the provisions of this act, may provide by by-laws, for the accumulation of reserve or guarantee fund-, which may be invested, only in the corporate name of the corporation, society, order or association in United States, State, county, city or other first class convertible bonds or securities. Such funds when so set apart and so invested, shall, with the increase thereof, belong to such corporation, society, order or association, and shall be used only to guarantee benefits, or be applied in payment of future assessments, or otherwise used for the promotion of the object or objects for which said funds are especially provided and set apart. Such guarantee or reserve fund, or part thereof, may be deposited with the State treasurer for the purpose of securing certificate

91 holders, and the State treasurer shall receive and hold in trust such bonds, stocks or other securities as may be offered by any corporation, society, order or association; and upon application give a certificate receipting for, and showing such deposit; every corporation society, order or association depositing such securities shall have the right to receive the income thereof, and to exchange the same from time to time, and to withdraw the same when it no longer desires to maintain such deposit.

All associations and organizations licensed under the provisions of chapter 175, Laws of 1895, will be required to comply with the provisions of the law as herein interpreted.

WILLIAM A. FRICKE,
Commissioner of Insurance.

Bill in equity. Filed Oct. 10 1901 Henry D. Lang, clerk. By LouiseB. Trott, deputy.

92 Circuit Court of the United States, District of Minnesota, Third Division.

J. C. IVERSON and SAMUEL WRIGHT, Complainants,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, Formerly the Bankers Life Association of Minnesota, Defendants.

Præcipe for Chancery Subpœna.

To the clerk of the above named court:

Please issue chancery subpœna for the following named defendants viz:—Minnesota Mutual Life Insurance Company, C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke and J. F. R. Foss trustees &c.

DILLON & GOETZ,
By WALTER S. DILLON.

Dated St. Paul Minn., Oct. 10 A. D. 1901.

(Endorsed:) Præcipe for chancery subpœna. Filed October 10th 1901 Henry D. Lang, clerk, by Louise B. Trott. deputy.

93 United States Circuit Court, District of Minnesota, Third Division. Chancery Rule Register.

1902, OCT. 10TH.

J. C. IVERSEN ET AL.
vs.
MINNESOTA MUTUAL LIFE INSURANCE COMPANY ET AL.

The complainants having filed a bill of complaint in this cause on application of Dillon & Goetz, solicitors, ordered, that a writ of subpœna issue as herein prayed for.

(Entered:) Chancery Common Rule Register C, page 76.

94 (Original.)

UNITED STATES OF AMERICA,
District of Minnesota, Third Division.

The President of the United States of America to the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly the Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert Lindeke, and J. F. R. Foss, trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly the Bankers Life Association of Minnesota, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States, for the district of Minnesota, on the first Monday of November next, at the city of St. Paul, then and there to answer the bill of complaint of J. C. Iversen and Samuel Wright, citizens of the State of Wisconsin, filed against you on the 10th day of October, A. D. 1901; hence fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 10th day of October 1901.

Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

95 MEMORANDUM.—The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this is returnable; otherwise the bill may be taken *pro confesso*.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

DILLON & GOETZ,
Complainants' Solicitor-.

(Endorsed:) Chancery subpœna. (Original) Returnable to November rules, 1901 Filed October 29th, 1901. Henry D. Lang, clerk. Dillon & Goetz, complainants' solicitor-.

96 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, } ss:

I hereby certify and return that I served the annexed chancery subpœna on the therein-named C. H. Bigelow, John B. Sanborn, Maurice Auerbach a*b*d Kenneth Clark as trustees of the Minnesota Mutual Life Insurance Co., of St. Paul, Minnesota, formerly the

Bankers Life Association of Minnesota, by handing to and leaving a true and correct copy thereof with each of them personally at St. Paul in said district on the 11th day of October A. D. 1901.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return that I served the annexed chancery subpœna on the therein-named The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly the Bankers Life Association of Minnesota, by handing to and leavi- a true and correct copy thereof with Timothy Palmer, president personally at St. Paul in said district on the 11th day of October A. D. 1901

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

97 *Return on Service of Writ.*

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return that I served the annexed chancery subpœna on the therein named defendants Crawford Livingston and Albert H. Lindeke trustees of the Minnesota Mutual Life Insurance Company of Saint Paul Minnesota, formerly the Bankers Life Association of Minnesota, by handing to and leaving a true and correct copy thereof with each of them personally at the city of St. Paul in said district on the 29th day of October A. D. 1901.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return that I served the annexed chancery subpœna on the therein-named J. F. R. Foss as trustee of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly the Bankers Life Association of Minnesota by handing to

and leaving a true and correct copy thereof with him personally at Minneapolis in said district on the 15th day of October, A. D. 1901.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

98 In the Circuit Court of the United States of America for the District of Minnesota, in the —— Term, A. D. 1901.

J. C. IVERSEN and SAMUEL WRIGHT, Plaintiffs,
versus
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, Formerly the Bankers Life Association of Minnesota, Defendants.
} Amendment to Bill.

To the honorable judges of the circuit court of the United States of America for the district of Minnesota, in chancery sitting:

Your orators, J. C. Iversen and Samuel Wright, respectfully represent, that they make the following additional allegations as an amendment to their bill herein, constituting paragraphs thirty-two, thirty-three and thirty-four thereof, and to immediately follow paragraph thirty-one in your orators' bill aforesaid.

Thirty-two. That since January first 1899 the Bankers Life
99 Association, now reorganized as defendant The Minnesota Mutual Life Insurance Company of St. Paul Minnesota, has totally abandoned the business for which it was originally organized, and has made no effort to secure new members on the method and under the arrangement of said The Bankers Life Association of Minnesota as theretofore existing, according to its original charter and purpose; and has ever since said January first 1899 completely desisted from soliciting persons to become members of said association according to its said method and purpose; and that said association reorganized as aforesaid, has not secured any new members whatever therefor, upon the plan and method of said association theretofore existing as aforesaid; but has devoted all its time and energy to condemning and blaming the purpose and method of said association as theretofore existing as aforesaid; and inducing its members to desert and abandon it, and surrender their certificates of membership therein in exchange for the "new guaranteed option policy," so-called life insurance proposition, as hereinbefore stated; and has so solicited and induced most persistently the younger members of said association; with the result that the average age of the remaining mem-

bers has been greatly increased, and the probable and actual burden of carrying the insurance of plaintiffs and their co-members has been very much increased.

Thirty-three. That the defendant trustees of defendant The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota,
100 have been and are fraudulently using the guaranty trust fund of said The Bankers Life Association of Minnesota belonging to the members thereof, refusing to purchase the "new guaranteed option policy," so-called life insurance proposition, under certificates of membership in said association, as per its charter aforesaid, for the purpose of maintaining and keeping up the reserve fund so-called, required by the laws of the State of Minnesota, upon the "new guaranteed option policy," so-called, life insurance proposition, issued and published by defendant trustees of the said The Bankers Life Association of Minnesota, reorganized as aforesaid; that the reserve fund required by the laws of the State of Minnesota on said "new guaranteed option policy," so-called life insurance proposition now exceeds the sum of $1,023,116.67; and that all of the funds and property in the possession of and controlled by defendant The Minnesota Mutual Life Insurance Company of St. Paul Minnesota, exclusive of the guaranty trust fund aforesaid, and other funds and property of the plaintiffs and their co-members, in said The Bankers Life Association aforesaid, are not equal to said reserve fund required, as aforesaid by the laws of the State of Minnesota; in fact, even including the worthless "interest bearing lien notes," so-called, hereinbefore described, is short of the amount of such required reserve, more than one hundred thousand dollars ($100,000.00)

101 Thirty-four. That the defendant trustees of defendant The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, have since January first 1899, been using money contributed by plaintiffs and their co-members, for conducting and fulfilling obligations of said The Bankers Life Association of Minnesota according to the methods and purpose thereof as existing prior to said date, and defined in its charter as aforesaid, including all assessments for expenses, and the interest on the guaranty trust fund, to carry on the business of soliciting and inducing members of said association to desert and abandon it, and exchange their certificates of membership therein for the aforesaid "new guaranteed option policy," so-called life insurance proposition; and that the money contributed by plaintiffs and their co-members as aforesaid, and actually used by said trustees aforesaid, is and has been much greater than the actual expense of administering and conducting the business of said association according to the methods and under the arrangement authorized and defined by its said charter as aforesaid.

SAM'L WRIGHT.
J. C. IVERSEN.
JOHN F. BYERS,
Counsel for Orators.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

102 Samuel Wright, on oath states that he is one of the complainants in the bill herein, of which the foregoing is an amendment, and has heard the same read, and knows the contents thereof. That the matters and things in said amendment of bill contained, are true of his own knowledge, except as to those matters which are herein stated to be on his information and belief, and as to those matters he believes them to be true.

SAM'L WRIGHT.

Subscribed and sworn to before me this 21st day of November, 1901.

[SEAL.] THEODORE BURMEISTER,
Notary Public, Milwaukee County, Wisconsin.

My commission expires January 10, 1904.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

J. C. Iversen, on oath state- that he is one of the complainants in the bill herein, of which the foregoing is an amendment, and has heard the same read, and knows the contents thereof. That the matters and things in said amenment of bill contained, are true of his own knowlefge, except as to those matters which are herein stated to be on his information and belief, and as to those matters he believes them to be true.

J. C. IVERSEN.

Subscribed and sworn to before me this 21st day of November, 1901.

[SEAL.] THEODORE BURMEISTER,
Notary Public, Milwaukee County, Wisconsin.

My commission expires January 10 1904.

103 (Endorsed:) Amendments to bill. Service of proposed amendment by copy admitted this 23rd day of November 1901 How, Taylor & Mitchell solicitors for defendants. Filed November 23rd 1901. Henry D. Lang. clerk.

104 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota. } C. Equity. 783.

The replication of J. C. Iversen *et al.*, complainants, to the answer of The Minnesota Mutual Life Insurance Company of St. Paul, Minn. *et al.* def'ts.

These repliants saving and reserving unto themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say: that they will aver and prove their said bill to be true certain and sufficient in the law to be answered unto; and that the said answer of the defendants is uncertain, untrue and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material, or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed

DILLON & GOETZ,
Sol't'rs for Complainants.

(Endorsed:) Replication. Filed February 3rd 1902. Henry D. Lang, clerk, by Louise B. Trott.

105 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, *et al.* } C. Equity. 783.
Affidavit of Walter S. Dillon.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Walter S. Dillon, being first duly sworn on oath, deposes and says, that he is a citizen and resident of said county and State, and is one of the solicitors in the above entitled cause;

That on or about the 1st day of November 1901 a person called at this affiant's office, in the city of Chicago, county and State aforesaid, and introduced himself as William H. Gold, and said he was

a certificate holder in the Bankers' Life Association of Minnesota; that said Gold told this affiant that he had been told about an action pending against the above named defendants by a certain friend of his, named Miller, who was a contractor and who had an office somewhere on La Salle street in Chicago, the exact number he could not give, and who (the said Gold said) had been informed in re-
106 gard to this litigation by circular letter, and who (the said Gold said) was a policy holder and intended to join this action; that the said Gold further stated that he was on his vacation from his place of business in Nelson, British Columbia, where he said he was engaged in the mining business; that the said Gold stated that he had lived at Redwood Falls, Minnesota, several years ago and while there had taken out a policy in the then Bankers Life Association; that he had kept his payments up after going to British Columbia, but had heard very little of the company since.

That Gold further stated to this affiant that he was stopping at present at the Wyoming hotel, at Chicago; that he had his policy there in his trunk; affiant states that he and the said Gold then discussed the points in the above entitled cause as set forth in the bill filed in the above court; that this affiant did not ask, urge, or request the said Gold to sign a power of attorney, authorizing his appearance in the cause, but merely explained the points in the action and showed him the blank power of attorney other members were signing; said Gold and this affiant then talked on other matters, said Gold describing his mining business, kind of people, lawyers, etc., in Nelson, B. C., and also relating facts about his personal history, etc., he finally stated to this affiant that as he had
107 plenty of leisure, he would call again at this affiant's office and bring his policy.

Affiant states that said Gold did call again on or about November 4th, at about 12.30 p. m. and presented his policy, which was examined by this affiant and found to be of name, date, amount and so on, as had been represented by the said Gold at his prior visit; the cause was again briefly discussed and the said Gold remarked "Well I believe I will sign the power of attorney," affiant states that he, (Gold), then and there signed the power of attorney, a copy of which is hereto attached and marked Exhibit "A" and made a part hereof as though at length herein set forth, at the same time the said Gold copied the number and date of the said policy on to the said power of attorney;

Affiant further states that the said Gold was a tall man of slender build, gray eyes, small moustache, wore light colored clothes, was of friendly disposition, and talked as one being informed in regard to mining; affiant states that he had never before heard of a William H. Gold as a person being a member of the said defendant company, that the solicitors in this cause have lists of certificate holders of those only who reside in large cities and did not have that of William H. Gold, and never sent a circular letter to him; affiant also states that the certificate number, 4648, is the same on the power of attorney Exhibit "A" hereto attached, as that given by

the William H. Gold who presented an affidavit to the above
108 court; that this affiant had no way of finding out the number and date of policies of respective members, even if he had their names, except from the members themselves; that he has never seen the said Gold before or since the time above set forth.

WALTER S. DILLON.

Subscribed and sworn to before me this 7th day of February A. D. 1902.

[SEAL.] MORRIS PANUSH,
Notary Public.

(Endorsed:) Affidavit of Walter S. Dillon Filed. July 1st 1902 Henry D. Lang, clerk By Louise B. Trott, deputy.

109 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY ET AL.

To Messrs. How, Mitchell and Taylor, solicitors for defendants:

You will please notice that on Monday the 17th day of Feb. 1902 at ten o'clock in the forenoon of said day or as — thereafter as counsel can be heard, plaintiffs will move said court, at its office in the Federal building in the city of Saint Paul, for an order making Esdras B. Trubey a party complainant herein.

Said motion will be made upon the affidavit and intervening complaint of said E. B. Trubey hereto attached and upon all the files herein and upon the ground that said E. B. Trubey is a necessary party to this action.

JOHN F. BYERS,
Counsel for Complainants.

110 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, *et al.*
C. Equity. 783. Affidavit of Esdras B. Trubey.

STATE OF ILLINOIS, *County of Cook*, } *ss:*

Esdras B. Trubey, being first duly sworn upon oath deposes and says: That he is a citizen and resident of the city of Chicago, county of Cook and State of Illinois;

That he is a member and holder of certificates of membership numbers 17376, 17377 and 17378, in the Bankers Life Association of Minnesota, reorganized as the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, one of the defendants herein;

That he became such member of aforesaid association, on the 13th day of March 1893, and has continuously since said 13th day of March 1893, complied with all the requirements of, and paid all charges levied by said association, upon him, affiant, to the present time, with the exception that he, affiant, has refused to sur-
111 render his said certificates of membership in said association, in compliance with the attempted coercion and threats and penalties made and imposed upon him, affiant, since January 1899, by said association, in accordance with the numerous communications to affiant, by the agents of said association, both in person and by mail, in like manner as in the bill of complaint in above entitled suit more fully set forth;

That he, affiant, is interested as above stated, in the result and subject matter of said suit, and has reason to believe that said suit will not be properly or faithfully prosecuted by one of the complainants thereto, viz: J. C. Iversen, in whose name with that of Samuel Wright, another of said complainants, said suit is being conducted;

That his, affiant's reason for such belief is, that on or about the 27th day of January 1902, he, affiant, was informed by the solicitors and counsel for the complainants in said above entitled suit, viz: Dillon and Goetz, and John F. Byers, that said complainant J. C. Iversen had revoked his, Iversen's, power of attorney to said solicitors and counsel to represent him, Iversen, in said suit, and had instructed them, said Dillon and Goetz and John F. Byers, to withdraw his, Iversen's, name from said suit as one of the complainants therein, and

That on or about the 30th day of January 1902, he, affiant, called upon and visited said J. C. Iversen at his, Iversen's place of
112 business in the city of Milwaukee, Milwaukee county and State of Wisconsin, to inquire of him, said Iversen, his reason for withdrawing from said above entitled suit as aforesaid, and affiant further states

That while waiting in said Iversen's place of business as aforesaid, he, affiant, overheard said Iversen say to a person with whom said Iversen was then and there conversing, and which said person this affiant verily believes was an emissary of defendant association, aforesaid, as follows:—"If I had known that things were going to turn out this way I would not have made it so strong against the Bankers Life" "I'll have my name off that bond no matter what it costs and the case will be dismissed in spite of the devil" "I will write a letter right away to those parties in St. Paul strong enough to get my name off the bond at once;" to which the aforesaid emissary replied as follows, "You know the time is short and that has got to be done right away," to which said Iversen replied, "You can rely on it, I will do as I agreed, and I will attend to it

this afternoon or the first thing in the morning," and thereupon said emissary departed, and affiant further states;—

That immediately thereafter he, affiant, engaged in conversation with said Iversen aforesaid, and asked him his reason for withdrawing from said suit, as aforesaid, to which said Iversen replied, that he withdrew from said suit because of his fear that a certain person,

113 one Carter, by name, would sell out his, Iversen's interest in said above entitled suit, and because of his, Iversen's aversion for said Carter; which said person, Carter, this affiant states, has no connection whatever with said suit, and of which said fact affiant verily believes said Iversen has full knowledge, and

That said Iversen's conduct as above stated is such, that, his, affiant's interest in said above entitled suit is necessarily imperilled thereby, and that he fears that his interest will not be properly protected if complainant, Samuel Wright were to prosecute said suit alone, as he, affiant, believes and is informed by counsel, that it may be necessary to have at least one paid up certificate holder in whose name together with that of complainant Samuel Wright, said suit may be conducted; and that this affiant's interest in said above entitled suit is the same as that of said complainant J. C. Iversen, except that affiant has three memberships on said defendant association, whereas said complainant Iversen has but one, and

That he, affiant has petitioned to be joined in above entitled suit by authorizing Dillon and Goetz, and John F. Byers to appear for him, affiant, in said suit, and further affiant sayeth not.

ESDRAS B. TRUBEY.

Subscribed and sworn to before me this 6th day of February A. D. 1902

[SEAL.] MORRIS PANUSH,
Notary Public.

114 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL. *versus* THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, *et al.*	C. Equity. 783. Intervening Complaint of Esdras B. Trubey.

To the honorable judges of the circuit court of the United States of America for the district of Minnesota, in chancery sitting:

Your petitioner, Esdras B. Trubey, respectfully represent*d* unto your honors that he is a citizen and resident of the city of Chicago, county of Cook and State of Illinois;

That he is a member in good standing, and holder of three certificates of membership (Nos. 17376. 17377 & 17378, dated March

13, 1893) in The Bankers Life Association of Minnesota, reorganized as The Minnesota Mutual Life Insurance Company of St. Paul Minnesota, one of the defendants herein;

That he has read the bill of complaint and amendment thereto and all the affidavits filed in the above entitled cause and admits and adopts as his own, all the allegations, matters and things contained in said bill of complaint and amendment to same; and verily believes each and all of the allegations therein and in the affidavits filed in behalf of the complainants herein, contained, to be true.

115 That your petitioner, Esdras B. Trubey, respectfully petitions this honorable court to be made a part- complainant in the above entitled suit and to be allowed to prosecute the same in his own behalf and all other members of the Bankers' Life Association of Minnesota, reorganized as aforesaid, wherever residing, or located in the United States of America, whom your honors may permit to join herein and who will contribute to the expense of the same as in the original bill set forth.

ESDRAS B. TRUBEY.

DILLON & GOETZ, *Solicitors.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Esdras B. Trubey, on oath states that he is the petitioner in the foregoing petition named, and holder of membership certificates Nos. 17376, 17377 and 17378; that he has heard the said petition and the original bill of complaint in above styled action and amendment thereto, read; that he knows the contents of each thereof;

That the matters and things in said bill and amendment and in foregoing petition contained are true of his own knowledge, except as to those matters which are therein state- to be on information and belief, and as to those matters he believes them to be true.

ESDRAS B. TRUBEY.

Subscribed and sworn to before me this 6th day of February A. D. 1902

[SEAL.]

MORRIS PANUSH,
Notary Public.

116 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, *et al.* } C. Equity. 783.

And now comes Esdras B. Trubey and presents his intervening complaint, duly verified, praying for leave to come in as a part-complainant, and the court having heard the same intervening complaint and accompanying affidavit read, and it appearing that said Esdras B. Trubey is a proper person to be made a party complainant herein, on motion of Dillon and Goetz and John F. Byers, solicitors and counsel for petitioner

It is ordered that the said Esdras B. Trubey be allowed to come in, and that he be, and hereby is made a party complainant in this cause.

——.

(Endorsed:) Affidavit and intervening complaint of Esdras B. Trubey, and order. Due service of within papers admitted this 8th day of February 1902. How Taylor & Mitchell Filed February 8th 1902 Henry D. Lang clerk.

117 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

This matter came on to be heard before this court this 17th day of February, 1902, upon the motion of Esdras B. Trubey to be made a part- plaintiff in the above entitled cause; John F. Byers, Esq., appearing for the plaintiffs and for said Esdras B. Trubey, and William Mitchell, Esq., appearing for the defendants; and it appearing to the court that said Esdras B. Trubey is a proper person to be made a complainant herein; and it appearing further that the said Trubey has heretofore filed in this court his intervening complaint; and it appearing further to the court that the said Trubey is a nonresident of the State of Minnesota;

118 It is ordered that the said Esdras B. Trubey be and hereby is made party complainant in this cause;

It is further ordered, as a condition to the making of the said Trubey a party plaintiff herein, that in case either of the plaintiffs J. C. Iversen or Samuel Wright shall withdraw or be withdrawn as party complainants herein, or the bond for costs heretofore filed in this matter be cancelled or withdrawn, that the said Esdras B. Trubey shall within ten (10) days after such withdrawal or cancellation, file with this court a bond for costs in form and amount the same as the bond heretofore required by the order of this court to be filed by the said Iverson and Wright.

Dated February 17, 1902.

WILLIAM LOCHREN, *Judge.*

Form approved.
WILLIAM D. MITCHELL.

(Endorsed:) Order making E. B. Trubey party plaintiff. Vol. 25 p. 104 Filed February 17th 1902. Henry D. Lang. clerk.

119 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, *et al.* } C. Equity. 783.

The Replication of Esdras B. Trubey, Complainant, to the Answer of the Minnesota Mutual Life Insurance Company et al.

This repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says: That he will aver and prove his intervening petition to be true, certain and sufficient in the law to be answered unto; and that the said answer of the defendants is uncertain untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained material or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said intervening petition he has already prayed.

DILLON & GOETZ,
Solicitors for Complainants.

—— ——, *Of Counsel.*

(Endorsed:) Replication of Esdras B. Trubey to answer to intervening complaint. Filed March 1st 1902. Henry D. Lang. clerk.

120 In the Circuit Court of the United States of America for the *Division* of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, *et al.*
C. Equity. 783. Notice of Motion for Receiver.

To the above named defendants and their solicitors, Messrs. How, Taylor and Mitchell, and their counsel, Mr. T. E. Palmer:

You will please take notice that on Monday, the 10th day of March, 1902, at ten o'clock in the forenoon, or as soon thereafter as co-nsel can be heard, at the court house in the new Federal building, at the city of St. Paul Minn., the complainants above named will move said court for an order for a receiver *pendente lite*, for said defendant corporation.

This motion will be made upon thw petition of Esdras B. Trubey, and affidavits filed in support of said petition and -pon all the files in this proceeding including the bill of complaint and amendment thereto heretofore filed and the answer of defendants thereto and upon the ground that such appointment is necessary on account of the insolvency of defendant corporation and that the portion of the corporate funds belonging to complainants are being diverted and appropriated to uses antagonistic to complainants and that
121 complainants will suffer irreparable loss if the relief prayed for is not granted.

DILLON & GOETZ,
Solicitors for Complainants.

JOHN F. BYERS, *Of Counsel.*

122 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, *et al.*
C. Equity 783. Application for Receiver.

To the honorable judges of the circuit court of the United States of America for the district of Minnesota, in chancery sitting:

Your petitioner, Esdras B. Trubey, who is one of the complainants in the above entitled cause, respectfully represents that the issues tendered in the complaint in the above cause cannot be tried and a decree thereupon entered before the lapse of many months to come;

That the defendant trustees of defendant association have taken and are taking the money held by said association, to secure your petitioner and his co-members in said association against default in the payment of assessments by the members of said association, and giving it to persons who purchase an unauthorized insurance proposition issued by the aforesaid trustees and denominated "new guaranteed option policy," as an inducement to such persons to purchase said unauthorized insurance proposition, a statement of which proposition in detail is set forth in the communication sent by said association to Frederick S. Capron, a co-member of your petitioner in defendant association, whose affidavit with said communication attached thereto as Exhibits "A," "B," "C" and "D," is filed herewith in support of this petition;

123

That aforesaid trustees are in many instances issuing the aforesaid unauthorized insurance proposition to members of said association, upon the agreed assumption that the person to whom it is issued had purchased said proposition when first becoming a member of said association, and charging in said proposition a premium rate for such age; at the same time taking from said persons a so-called "interest bearing lien" on said proposition for an amount of "reserve so-called, on such proposition, representing the difference thereof between the aforesaid assumed date of issue and the attained age of the person to whom said proposition is issued, which "interest bearing liens" so-called, said trustees are listing as assets in their statements of assets and liabilities of said association to the public, and to the insurance departments of the various States in which said association is licensed to transact business. The amount of which "interest bearing liens," so-called, being stated in the report of the secretary of said association for the year ending July 31st, 1901, sent by defendant association to Wesley L. Knox, a co-member of your petitioner in said association, whose affidavit with said report of said secretary thereto attached as Exhibit "A" is filed also in support of this petition, at $597,564 24, or more than one-third of the total assets so stated of said association. That a true copy of one of the propositions and the so-called "lien are hereto attached, marked "F." That said copies are made from a policy actually issued by said company to one John Prondzinski and bearing date of July "2" 1900 and number 29769.

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That the said trustees have remitted and released, and are remitting and releasing members thereof who purchase said denominated "new guaranteed option policy" as aforesaid, from the payment of assessments for such members' share of losses and disbursements of said association; which assessments so remitted and released, are a burden put upon your petitioner and his co-members for refusing to purchase said "new guaranteed option policy" as set forth in Exhibit "B" of the affidavit of Frederick S. Capron, filed herewith as hereinbefore stated; and Exhibit "F" hereto attached.

That the commissioner of insurance of the State of Minnesota has certified, on the 25th day of January 1902, that the liabilities of defendant association on its outstanding "legal reserve," so-called, life

insurance proposition, amount on the 31st day of December 1901, to the sum of $1,147,567.00.

That the aforesaid trustees have been and are using the "guaranty trust fund" and other funds and money belonging to your petitioner and his co-members, holding certificates of membership in said association, as a credit against aforesaid liabilities, certified to by said commissioner aforesaid;

125 That defendant association has filed a statement of the business done by it during the year ending December 31, 1901, with the commissioner of insurance of the State of Minnesota; that said statement shows that the entire amount of new insurance secured by it during said year is $43,500., consisting of 24 "legal reserve," so-called life insurance propositions, and that no new memberships have been secured in said association under the original purpose and plan thereof; that a copy of said report or statement is hereto attached, marked Exhibit "G."

That the amount of expense for conducting and managing said defendant association including the securing of said 24 "legal reserve" life insurance propositions (so-called) during said year is $147,358.22.

That your petitioner has received from said defendant association, a notice of an annual meeting of said association to be held at its home office, in the city of St. Paul, Minnesota, on Tuesday, the 4th day of March 1902, at which meeting, as your petitioner verily believes, there will be a large majority of holders of said "new guaranteed option policies" so-called, whose interests are antagonistic to the interests of your petitioner and co-members, and that he has reason to believe that the action which will be taken at said meeting will be prejudicial and injurious to your petitioner's rights herein;

Your petitioner further represents unto this honorable
126 court that during the past year the said defendants have, with the most persistent efforts, solicited members of said association to purchase the so-called "new guaranteed option policy" life insurance proposition; and that they have succeeded in influencing 794 of such members to abandon and desert the petitioner and co-members, by offering credits and using threats of exorbitant assessments to obtain their applications for said proposition; that they have even in such manner attempted to induce the complainants in this suit to withdraw and abandon the original plan of said association; that by this action they have decreased and are decreasing the guaranty trust fund and are taking away the security and support of your petitioner's membership therein and constantly impairing and prejudicing the rights of your petitioner and co-members;

That a receiver is imperative as evidenced by the enormous extravagance and the improper use of the funds as above set forth and your petitioner believes that unless said association is forthwith taken from the possession and control of said trustees and placed in the hands of a receiver, under the direction and control of this

honorable court, he and his co-members therein will suffer irreparable injury and hardship and the loss and depletion of their interests therein.

Forasmuch therefore, as your petitioner is without remedy in the premises except in a court of equity, and to the end that
127 he may have immediate relief necessary to save him from loss and injury imminent as herein set forth;

Wherefore your petitioner prays that a hearing may be immediately had and that your petitioner may be allowed to present affidavits, and the bill of complaint and amendment thereto already on file in support of the issues herein contained, that a receiver may be appointed, *pendente lite*, for the defendant corporation, until the issues in this cause may be finally tried, according to the practice of this court in like cases, and such other and further relief in the premises as equity may require and to your honors seem meet.

ESDRAS B. TRUBEY.

DILLON & GOETZ,
Solicitors for Complainants.
JOHN F. BYERS, *Of Counsel.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Esdras B. Trubey, on oath says that he is the petitioner in the foregoing petition named and by him subscribed; that he has heard the same read, and knows the contents thereof. That the matters and things in said petition contained are true of his own
128 knowledge except as to those matters and things which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

ESDRAS B. TRUBEY.

Subscribed and sworn to before me this 27th day of February A. D. 1902

[SEAL.]

F. J. LANG,
Notary Public.

129 EXHIBIT "F."

Extracts from application for policy and from policy issued in pursuance of the said application, being number 29769 of the Bankers Life Association, St. Paul, Minnesota, purporting to have been issued on the 2nd day of July, 1900, to John Prondinski.

A. Clause number 6 in the application.

"6. I hereby surrender said certificate and exchange it for a whole life policy on the guaranteed option form now issued by your company for $2000 and I hereby request that the new policy for which I have applied shall take effect as of April 16th 1892, the date of my

certificate now surrendered and issued to me at my then rated age, viz., 49 years, with the corresponding premium of $19.70 according to your table of rates now in use, payable every three months, and I agree that in consideration of such reduced rate and the taking effect of the policy as of the date when I became a member of your company said policy hereby applied for shall be issued subject to a lien equal to the reserve, to-wit: Three hundred and twenty-three 28/100 dollars, $323.28, that would have accumulated on such policy at this time had it in fact been issued at the date of my original certificate and which will require to be held for my new policy at this time computed according to the actuaries or combined experience table of mortality, on the basis of four per cent. interest, less the amount to be credited me by the association
130 on account of my past payments to wit: eighty-nine 42/100 dollars, $89.42 and the said net lien, to wit: two hundred and thirty-three 86/100 dollars $233.86, shall bear interest at the rate of five per cent. per annum, which interest, if not paid in cash at the end of each year, shall be added to said lien and bear interest at the same rate and on the same terms. Said lien, principal and interest shall continue until the maturity of said policy, and shall be paid out of the amount insured thereby unless otherwise paid prior thereto; provided, however, that if the amount of said lien with the accumulated interest, shall ever exceed the reserve for this policy, computed according to the actuaries' or combined experience table of mortality on the basis of four per cent. interest, any excess shall be paid by me in cash on demand."

B. Clause number 7 from "Special advantages, privileges and provisions" contained in said policy.

"Seventh. It is specially agreed that in construing each and all of the provisions of this policy, it shall be considered as dating and as having been in force from April 16th, 1892, so that the premium hereon shall be that proper for a person of the rated age of the insured on said date, and in consideration of the above, it is further specially agreed that this policy is subject to a lien and indebtedness of two hundred and thirty-three 86/100 dollars $233.86 and that said lien shall bear interest at the rate of five per cent. per annum, which interest, if not paid in cash at the end of each year,
131 shall be added to said lien and bear interest at the same rate, and on the same terms: Provided, however, that if said lien with the accumulated interest shall ever exceed the reserve for this policy computed according to the actuaries' or combined experience table of mortality on the basis of four per cent. interest, any excess shall be paid in cash by the insured on demand. It is also agreed that any surplus allotted to this policy shall be applied to the reduction of said lien or interest thereon."

132 EXHIBIT "G."

STATE OF MINNESOTA,
DEPARTMENT OF INSURANCE,
ST. PAUL, *Feb. 28th*, 1902.

I, J. A. O'Shaughnessy, insurance commissioner of the State of Minnesota, do hereby certify that I have compared the annexed copy of sworn annual statement covering business and financial affairs of the Minnesota Mutual Life Insurance Company of St. Paul Minn. as of the year ending December 31st 1901 with the original on file in this department, and that the same is a correct transcript therefrom, and the whole of the said original.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of St. Paul, the day and the year first above written.

[SEAL.] ELMER H. DEARTH,
Insurance Commissioner.

133 *Annual Statement for the Year Ending December* 31, 1901,

Of the condition and affairs of the Minnesota Mutual Life Insurance Company, organized under the laws of the State of Minnesota, made to the insurance department of the State of Minnesota, pursuant to the laws thereof.

President, Timothy R. Palmer.
Secretary, Douglas Putnam.
1st vice-president, John B. Sanborn.
2nd vice president, —— ——.

Incorporated August 6th, 1880.

Commenced business, August 6th, 1880.

Home office (street and No.), St. Paul, Minnesota.

I.—*Capital Stock.*

1. Amount of capital stock authorized, Mutual Company for $—		Subscribed	
2. Amount of capital paid up in cash, Mutual Company, $—.			
(*a.*) Amount of net ledger assets December 31 of previous year			$1,413,011,18
Agents debit balance	$871,82		
Furniture & fixtures	1,00		
Medical library	1,00		
	873,82		
Less amount due agents	140,18		
Add assets not reported last year		733,64	
134 Extended at			$1,413,744,82

II.—*Income During Year.*

As shown by the books at home office at close of business December 31.

1.	First year's premiums (except items 2½, 3 & 5), less interest included in deferred premiums, $— and $— for first year's reinsurance..	$134,877,47	
2.	Renewal premiums (except items 3 and 5), less interest included in deferred premiums, $— and $— for renewal insurance.....	281,103,53	
2½.	Single premiums (except items 3, 4, 5 and 6), without deductions for commissions or other expenses..	None	
3.	Dividends applied by policy holders to pay running premiums, 1st year premium $—; renewals $— (see item 9, disbursements).....	None	
4.	Dividends applied by policy holders to purchase paid-up additions and annuities (see item 10, disbursements).....	None	
5.	Surrender values applied to pay running premiums, 1st year premiums, $—; renewals, $— (see item 12, disbursements).....		
6.	Surrender values applied to purchase paid-up insurance and annuities (see item 13, disbursements.....	1,809,71	
135			
7.	Consideration for annuities (other than matured installment policies)..	None	
8.	Total premium income.....		$417,790.71
9.	Rents from Co.'s property, including $— for Co.'s use of own buildings.....	None	
10.	Interest on loans on mortgages of real estate.....	$1,991,49	
11.	Interest on collateral loans, including premium notes, loans or liens.	22,368,64	
12.	Interest on bonds and dividends on stocks	32,643,60	
13.	Interest on other debts due the company, and on deposits in banks..	1,324,96	
14.	Disc't on claims paid in advance, $ none; int. on deferred premiums $ none.....		
	Total rents and interest.....		58,328,69
15.	Profit on sales of real estate, $ none; on appreciation of securities.....	2,756,25	2,756,25
16.	Ledger assets, other than premiums, received from other companies for assuming their risks,—	None	
17.	From other sources, viz. (profit and loss account must be itemized):.	313,62	
	Lien notes.....	269,541,59	
			269,856,21
	Total income during the year.....		748,431,86
	**Sum of both amounts.....		$2,162,476,86**

136 III.—*Disbursements During Year.*

As shown by the books at home office at close of business December 31.

1. For death claims, $217,978,00; additions, $ none	$217,978,00		
2. Matured endowments, $ none; additions, $ none			
3. Installment death claims, $ none; additions, $ none			
Total	$217,978,00		
4. Deduct amount received from other companies for claims on policies of this company reinsured, of which $— is for matured endowments			
5. Total net amount actually paid for losses and m-tured endowments		$217,978,00	
6. Payments returned to policy holders		2,547,95	
7. Premium notes voided by lapse, $6,308,30; lien notes cancelled	93,840,91	100,149,21	
8. Dividends paid policy holders less $—; received for dividends on reinsurances	None		
9. Dividends applied by policy holders to pay running premiums (see item 3, income)	None		
10. Dividends applied by policy holders to purchase paid-up additions and annuities (see item 4, income	None		
137			
11. Surrender values paid —; received on surrendered reinsurances		1,140,39	
12. Surrender values applied to pay running premiums (see item 5, income)	None		
13. Surrender values applied to purchase paid-up insurance and annuities (see item 6, income)		1,809,71	
Total paid policy holders			
Amounts carried forward		$323,625,26	$2,162,476,68

(*a.*) Comprising balance of all ledger accounts counted as assets less ledger liabilities.

(*b.*) The increase or decrease of capital, if any, should be noted, and the net ledger assets, so augmented or diminished, extended.

The attention of companies is particularly directed to the separation of the premium receipts into annual premiums and single premiums, as called for by items 1, 2 and 2½ of the income portion of the statement. A corresponding change is made in the method of reporting commissions by item 15 of the disbursements. Statements filed without this separation will be returned to the companies for correction.

Above figures are correct.

L. D. MANN.
M. M. DAVIS.

138	Amounts brought forward.....		$323,625,26	$2,162,476,68
	Disbursements—Continued.			
14.	Paid stockholders for interest or dividends (amount declared during the year.....	$ None		
15.	Commissions and bonuses to agents (less commission received on reinsurance), new policies	63,868,03		
	Single premium policies	None		
	Renewal policies	202,57		
	On annuities, $ none.....			
16.	Commuting renewal commissions...		$64,070,60	
17.	Salaries and allowances for agencies, including managers, agents and clerks		13,657,94	
18.	Salaries and all other compensation (Officers.....	$17,661,62		
	Home office employés	12,648,90)		
			29,710,52	
19.	Medical examiners' fees.....	$64,00		
	Inspection of risks.	4,00		
			68,00	
20.	Taxes on new premiums and renewal premiums.....	$998,44		
	On franchise $—			
	On reserves $—			
	Municipal licenses, $—			
			998,44	
21.	Taxes on real estate.....	None		
	On other investments....	None		
22.	Insurance department fees and agents' licenses		2,177,11	
23.	Repairs and expenses (other than taxes) on real estate.....	None		
24.	Rent.....	2,253,60		
	Less.....	27,50		
	Received under sub-lease.....		2,226,10	
139				
25.	Advertising.....	$1,159,30		
	Printing and stationery.....	3,775,78		
	Postage.....	1,879,00		
			$6,814,08	
26.	Legal expenses.....	$6,655,04		
	For furniture, etc.....	323,55		
			6,978,59	
27.	Losses on sales of real estate.....	None		
	Depreciation of securities almost exclusively U. S. bonds.....	10,998,75	10,998,75	
28.	All other items, viz. (profit and loss account must be itemized):			
	Coll. & exchange..	1,476,51		
	Actuaries' fees, revenue stamps, fidelity bonds &c.	8,171,58		
			9,648,09	
	Total miscellaneous expenses.	136,349,47		
	Total disbursements.....			470,973,48
	Balance			$1,691,503,20

Invested in the following:

IV.—*Ledger Assets.*

As per ledger account shown by the books at the home office at close of business December 31.

1. (*a*) Book value real estate (Schedule A), unincumbered	None	
2. Mortgage loans on real estate (Schedule B), first liens	78,500,00	
Other than first	None	
		$78,500,00
3. Loans secured by pledge of bonds, stocks, or other collateral, per Schedule C	None	
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4. Loans made to policy holders on this company's policies assigned as collateral		12,109.40
5. Premium notes on policies in force, of which	$2,227.16	
is for first year's premiums		41,756.30
6. (*a*) Book value bonds excluding interest	918,446.04	
Stocks	10,200.00	
(Schedule D)		928,646.04
7. Cash in company's office	$3,594.92	
Deposited in bank	30,331.99	
		33,926.91
(Name the banks and amounts)		
Merchants national bank, St. Paul.	$19,358.25	
National German American bank, St. Paul	10,838.24	
First national bank, St. Paul	135.50	
8. Bills receivable	None	
Agents' debit balances	716.41	716.41
Lien notes		644,382.27
Total		$1,691,558.20

Deduct Ledger Liabilities.

9. Agents' credit balances	None	
Borrowed money	None	
All other	$55.00	55.00
Total net ledger assets as per balance above		1,691,503.20

Non-ledger Assets.

10. Interest due	None	
And accrued	$1,289.52	
On mortgages		$1,289.52
11. Interest due	592.50	
And accrued	3,628.92	
On bonds and stocks		4,221.42
12. Interest due	None	
And accrued	None	
On collateral loans	None	

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13. Interest due	None		
And accrued	$14,996.57		
On premium notes, loans or liens		$14,996.57	
14. Interest due	None		
And accrued	None		
On other assets	None		
15. Rents due	None		
And accrued	None		
On company's property or lease			20,507.51
16. Market value of real estate over book value, as per Schedule A	None		
17. Market value (not including interest, in item 11) of bonds and stocks over book value, as per Schedule D	12,718.56		12,718.56
18. Gross premiums, not more than three months due after period of grace, unreported on policies outstanding December 31	New business. 1,218.19	Renewals. 16,461.40	
19. Gross deferred premiums on policies outstanding December 31	6,210.66	62,970.22	
20. Totals	$7,428.85	$79,431.62	
21. Deduct cost of collection 48-85/100 per cent. on "new;" per cent. on "renewals"	3,629.18	794.31	
22. Net amount of uncollected and deferred premiums			82,436.98
23. Other items			
Gross assets			1,807,166.25

Deduct Assets Not Admitted.

1. Company's stock—owned	None;		
Loans on	None.		
2. Supplies, printed matter stationery, furniture, fixtures, safes, etc.		2.00	

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3. Commuted commissions	None;		
Agents' debit balances not secured by bonds	$716.41	716.41	
4. Loans on personal security, indorsed or not	None		
Bills receivable, unsecured	None		
5. Premium notes or loans and net premiums in item 22 in excess of reserve on policies	None		
6. Commissions payable to agents on premium notes when paid		1,122.25	
7. Depreciation in ledger assets to bring same to market value:			
Real estate	None;		
Bonds and stocks	None;		
Other	None.		
Total			1,840.66
Total assets admitted			$1,805,325.59

(a) If the cash value of real estate or bonds and stocks is less than book value, the amount of the depreciation should be deducted in assets "not admitted;" if over book value the excess should appear in item 16 or 17, and should also be shown on Schedule A or D.

Above figures are correct.

L. D. MANN.

M. M. DAVIS.

V.—*Non-ledger Liabilities.*

As shown by the books at home office at close of business December 31.

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1. Net present value of all the outstanding policies in force on the 31st day of December, 1901, as computed by insurance department of Minnesota according to the actuaries' table of mortality, with four per cent interest		$1,147,567.00	
Same for reversionary additions	None.		
Same for annuities (including those in reduction of premiums)	None.		
Total.			
Deduct net value of risks of this company reinsured in other solvent companies	None.		
Net reserve			$1,147,567.00
2. Present value of amounts not yet due on matured installment policies (face, $—)	None		
3. Matured endowments due and unpaid.	None		
4. Death losses due and unpaid.	None		
5. Death losses in process of adjustment or adjusted and not due	$14,000		
6. Death losses which have been reported and no proofs received	8,000		
7. Death losses and other policy claims resisted by the company, not yet outlawed	6,000		
8. Due and unpaid on annuity claims, $—; on installment policies, $—			

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Gross policy claims	28,000		
Deduct due from solvent companies for reinsurance			
Net policy claims			$28,000.00
9. Unpaid dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums	None.		
10. Unpaid interest or dividends to stockholders	None		
11. Salaries, rents, expenses, taxes, bills, accounts, bonuses, commissions, medical and legal fees, etc., due or accrued			1,842.38
12. Premiums paid in advance	None		
13. Surrender values claimable on policies canceled whose reserves are not included in item 1.	None		
14. Any other liability, viz.: guaranty trust returnable at death			15,223.00
Liabilities on policy-holders' account			$1,192,632.38
Gross divisible surplus		612,693.21	
Capital stock paid up	None		612,693.21
Total			$1,805,325.59

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VI.—*Exhibit of Policies.*

The following is a correct statement of the business of the year on policy account as it stood at close of business December 31, according to home office books:

I.

At end of previous year:	No.	Amount.
1. Whole life policies	3,131	9,316,000
2. Endowment policies		
3. All other policies	4,462	8,924,000
4. Return premiums and reversionary additions		
5. Total Nos. and amounts	7,593	18,240,000

II.

New policies issued:	No.	Amount.
1. Whole life policies	23	42,500
2. Endowment policies	1	1,000
3. All other policies		
4. Return premiums and reversionary additions		
5. Total Nos. and amounts	24	43,500

III.

Old policies revived:	No.	Amount.
1. Whole life policies	25	75,000
2. Endowment policies		
3. All other policies	199	397,000
4. Return premiums and reversionary additions		
5. Total numbers and amounts	224	472,000

IV.

Old changed and increased:	No.	Amount.
1. Whole life policies	1,446	4,034,704.20
2. Endowment policies		
3. All other policies	6	15,925
4. Return premiums and reversionary additions		
5. Total numbers and amounts	1,452	4,050,629.20

Totals:	No.	Amount.
1. Whole life policies	4,625	13,468,204.20
146 2. Endowment policies	1	1,000
3. All other policies	4,667	9,336,925
4. Return premiums and reversionary additions		
5. Total numbers and amounts	9,293	22,806,129.20

V.

Deduct ceased:

(a) By death:	No.	Amount.
1. Whole life policies	40	119,000
2. Endowment policies		
3. All other policies	60	120,000
4. Return premiums and reversionary additions		
5. Total numbers and amounts	100	239,000

VI.

By maturity:	No.	Amount.
1. Whole life policies		
2. Endowment policies		
3. All other policies		
4. Return premiums and reversionary additions		
5. Total numbers and amounts		

VII.

By expiry:	No.	Amount.
1. Whole life policies		
2. Endowment policies		
3. All other policies		
4. Return premiums and reversionary additions		
5. Total Nos. and amounts		

VIII.

By surrender:	No.	Amount.
1. Whole life policies	18	61,000
2. Endowment policies		
3. All other policies		
4. Return premiums and reversionary additions		
5. Total numbers and amounts	18	61,000

IX.

By lapse:	No.	Amount.
1. Whole life policies	592	1,796,000
147 2. Endowment policies		
3. All other policies	1,139	2,289,000
4. Return premiums and reversionary additions		
5. Total numbers and amounts	1,731	4,085,000

X.

By change and decrease:	No.	Amount.
1. Whole life policies	22	89,500
2. Endowment policies		
3. All other policies	2,045	4,087,000
4. Return premiums and reversionary additions.		
5. Total numbers and amounts	2,067	4,176,500

XI.

By not being taken:	No.	Amount.
1. Whole life policies	28	84,000
2. Endowment policies	1	
3. All other policies		
4. Return premiums and reversionary additions		
5. Total numbers and amounts	29	84,000

XII.

Total terminated:	No.	Amount.
1. Whole life policies	701	2,149,500
2. Endowment policies		
3. All other policies	3,244	6,496,000
4. Return premiums and reversionary additions		
5. Total numbers and amounts	3,945	8,645,500

XIII.

(b) Outstanding end of year:	No.	Amount.
1. Whole life policies	3,924	11,318,704.20
2. Endowment policies	1	1,000
3. All other policies	1,423	2,840,925
4. Return premiums and reversionary additions		
5. Total numbers and amounts	5,348	14,160,629.20

XIV.

Policies reinsured:

148 NOTE.—Installment policies should be entered and deducted in above exhibit of policies, for the present value of installments only.

(a) State here the face value corresponding to the present value entered in item 5 ("by death") above $239,000.

(b) Paid-up insurance included in the final total of item 13 (including return premium and reversionary additions), No. of policies 15, amount, $21,101.85.

The annuities in force December 31 last ensuing were in number none, representing in annual payments, none.

Above figures are correct

L. D. MANN.

M. M. DAVIS.

Miscellaneous Questions.

1. Have the books of the company been kept open after the close of business December 31 last for the purpose of making any entry that effects this statement? Answer. No.

2. Is there a loading or margin for expenses over the net premium on all policies according to the actuaries' 4 % table? Answer. Yes.

3. Is any surrender value promised in excess of the actuaries' 4 % reserve? Answer. No.

If so, what amount therefor has been included in liabilities and where? Answer. —.

149 4. What proportion of premiums on policies issued by the company may be taken in notes, or other form of lien, on the policies? Answer. On first year's premiums. None on new business. On renewal premiums. Not more than the cash surrender value of the policy. In making transfers of insurance in force short-term notes were sometimes taken for a part of the premium.

5. Is the business of the company conducted upon the mutual, mixed or strictly proprietary plan? Answer. Mutual.

6. What proportion of the profits of the company may be paid to stockholders for use of real or guarantee capital? Answer. No capital stock.

7. Does any officer, director or trustee receive any commission on the business of the company? Answer. No.

Business in Minnesota During the said Year.

	No.	Amount.
Number and amount of policies on the lives of citizens of said State in force December 31 of previous year.....	3,738	$8,135,500
Number and amount of policies on the lives of citizens of said State issued and reinstated during the year.....	414	981,554.78
Total.....	4,152	$9,117,054.78
Deduct number and amount which have ceased to be in force during the year including removals from the State.	2,477	5,186,000
Total number and amount of policies in force in said State Dec. 31, last.....	1,675	$3,931,054.78

	No.	Amount.
Amount of losses and claims on policies in said State unpaid December 31 of previous year.....	4	8,000
Amount of losses and claims on policies in said State incurred during the year, from death, $—; from endowments, $—; from		

150

	No.	Amount.
Bro't for'd.....	4	8,000
annuities, $—; all other, $— total.....	37	80,000
Total.....	41	88,000
Amount of losses and claims on policies in said State settled during the year, in case, $78,000; by compromise, $ none.....	....	78,000

What amount of premiums was collected or secured in said State during the year since August 5" (the date of reincorporation as legal reserve company) in case and notes or credits, without deduction for losses, dividends, commissions or other expenses? Answer. Cash, $35,097.22. Notes or credits, $2,428.98. Total, $37,526.20

Amount paid or allowed for dividends during year to policyholders in Minnesota, $—.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Timothy R. Palmer, president, and Douglas Putnam, secretary, of the Minnesota Mutual Life Insurance Company, being duly sworn, each for himself deposes and says, that they are the above described officers of the said company, and that on the thirty-first day of December last all the above described assets were the absolute property of the said company, free and clear from any liens or claims thereon except as above stated; and that the foregoing statement, with the schedules and explanations herein contained, annexed or referred to, are a full and correct exhibit of all the assets, liabilities, income and disbursements, and of the condition and affairs

of the said company on the said thirty-first day of December last, and for the year ending on that day, according to the best of their information, knowledge and belief, respect-

T. R. PALMER.
DOUGLAS PUTNAM.

bscribed and sworn to before me, this 4" day of February ., 1902.

L. D. Mann, Notarial Seal.]

L. D. MANN,
Notary Public in and for the State of Minnesota.

commission expires December 9", 1902.

ORE.—In case the following schedules do not afford sufficient companies may furnish them on separate forms, provided the are upon paper the same size and arrangement, containing the mation asked for herein.

Special Deposit Schedule.

ment of all deposits or investments held for the special protection of the citi- of States or countries wherein such deposits or investments are made, with market value of the securities so deposited or invested; and the liabilities luding therein reserve and policy claims) in such States or countries respect- y.

e or try.	Description of deposit.	Par value.	Insurance in force. No. of policies. Am't	Net value. State standard.	Losses unpaid and all other liabilities.
	None.			(Corporate Seal.)	

ve figures are —.

M. D. MANN.
M. M. DAVIS.

152 *Gain and Loss Exhibit During Year of Statement.*

(Upon basis of actuaries' mortality and 4 % interest.)

Surplus beginning of said year	$
1. Loading earned on premiums of insurance and annuity	
2. Interest, rents, etc., earned (including changes in accrued and unpaid)	
Profit and loss items (including changes in market values, unadmitted assets and special liabilities)	
3. Cost of insurance (including expected payments, less reserves expected to be released by death, on annuities)	
4. Reserves (full tabular), released by surrender and lapse (adjusted with changes, restorations and not taken policies considered in force at beginning of year), of which $— was from policies upon which three years' premiums had not been paid	
Total credits	$
5. Expenses incurred. Insurance (including change in cost of collecting unpaid and deferred premiums, and in liability for unpaid bills, accounts, etc.)	
Investment (including real estate repairs, taxes and expenses and for handling investments)	
6. Interest required to maintain reserve	
7. Death losses incurred $—; annuity payments incurred $—	
Less reinsurance reserves and compromises on losses, and reserves released by death of annuitants	
8. Surrender and lapse values allowed (including notes canceled over restored, net unpaid and deferred premiums entering into item 4, and change in liability for policies entitled to surrender value), of which $— was for policies upon which three years' premiums had not been paid	

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9. Dividends to policy-holders (including tontine or deferred dividends used over reserves, and change in liability for dividends due and unpaid	
Dividends to stock holders (including change in liability for dividends due and unpaid)	
Surplus at end of said year	
Total debits	$

SCHEDULE A.

Real estate owned, the value thereof, the nature and amount of all liens and incumbrances thereon, including interest due and accrued; also the gross amount of rental in each of last three years.

Year when acquired.	No.	Quantity, dimensions and location of lands; size and description of buildings; nature of incumbrances, if any.	Amount of incumbrances.	Book value of premises.	Appraised val. of premises.
		None.	*Dollars.*	*Dollars.*	*Dollars.*

Gross Rental and Expenses, Including Taxes, in Each of Last Three Years.

ental.	Expenses.	Rental.	Expenses.	Rental.	Expenses.
ollars.	*Dollars.*	*Dollars.*	*Dollars.*	*Dollars.*	*Dollars.*

NOTE.—Please send duplicate of this schedule.

SCHEDULE C.

ds, stocks, and other securities (except mortgages) hypothecated as collateral curity for cash actually loaned, the par and market value of same and amount aned.

ription of llateral.	Pay value.	Rate used.	Market value.	Amount loaned thereon.	Rate of interest on loan.
ne.	*Dollars.*		*Dollars. Cents.*	*Dollars. Cents.*	

OTE.—Please send duplicate of Schedule D, bonds and stocks.

SCHEDULE D.

Stocks owned by the company. (See below for bonds.)

Description.	Year of maturity.	Option.*	Interest.		Book value.	Par value.	Rate used.	Market value (or Interest).
			Rate of.	How paid.†				
chants' National Bank stock.....					*Dollars. Cents.* 10,200 00	*Dollars.* 8,500	120	*Dollars. Cts.* 10,200 00

If the option of redemption is above par state the premium.
†Write A for annual, S for semi, Q for quarterly.

Schedule D—Continued.

Bonds Owned by the Company.

Description.	Year of maturity.	Year of option.	Interest. Rate of.	Interest. How paid.	Book value.	Par value.	Rate used.	Market value (ex-dividend).
					Dollars. Cents.	*Dollars.*		*Dollars. Cents.*
United States reg. bonds	1907		4	S	462,725	414,000	112	464,800
" " " "	1918		3	S	21,600	20,000	108½	21,700
Sioux Falls, S. D	1925		4	S	104,250	75,000	140	105,000
Windom, Minn	1910		5	S	5,306 25	5,000	106⅛	5,306 25
Preston, Minn	1915		5	S	26,352 50	25,000	110	27,500
Yankton county, S. D.	to 1903 to 1908	Annually.	6	A	6,429 70	6,000	107+	6,429 70
Detroit, Minn	1919		4	S	10,000	10,000	100	10,000
Seattle, Wash	1907		6	A	6,312 20	6,000	108	6,480
St. Paul Gas Light Co.	1920		5	S	10,407	10,000	112	11,200
Montana Central Ry. Co.	1915		6	S	17,437 50	15,000	120	18,000
Mayville, N. D.	1937		6	S	66,650	50,000	140	70,000
Western Union Tel. Co.	1919		5	A	12,620 25	11,850	112	13,272
Walla Walla, Wash.	1950		4½	S	10,000	10,000	108	10,800
St. James, Minn.	1926		5	S	10,453 40	10,000	115	11,500
Madison, S. D.	1914		6	A	5,928	5,000	118+	5,928
Mpls. & St. L. R. R. Co.	1914		6	S	2,302 50	2,000	118+	2,371 20
Aberdeen, S. D.	1949		4	S	19,775 54	20,000	104	20,800
Iowa Central Ry. Co.	to 1906 to 1914	S. annually.	4¼	S	9,168 75	9,000	101⅞	9,168 75
Northern Pacific R. R.	1938		5	S	29,125	25,000	117	29,250
Thief River Falls, Minn.	1996		4	S	10,000	10,000	100½	10,050
155 South Omaha, Neb.	1916		4½	A	7,912 50	7,500	105½	7,912 50
Toledo St. L. & West R. R.	1910	1905 or after.	6	A	10,692	10,000	106+	10,692
	1925		3½	S	9,000	10,000	90¾	9,075

Downer Co. N. D.	1918		5	S	9,019 20	8,000	112+	9,019 20
North Chicago St. Car Co.	1931		4½	S	26,468 75	25,000	108	27,000
Duluth and Iron Range R. R. Co.	1937		5	S	7,910	7,000	113	7,910
					918,446 04	807,350		931,164 60
					Book value			918,446 04
					Market value over book value.			12,718 56

Above figures are correct.
L. D. MANN.
M. M. DAVIS.

No.	Date.		Record of mortgage.				Amount of principal unpaid.	Interest.				Value of lands mortgaged.	Value of buildings.	Am't of ins. held by the Co. on the buildings.	Location and description.
	Year given.	Year due.	State.	County.	Book.	Page.		Date due.	Past due.	Accrued.	Rate of (a).				Town, street and number. (State if this mortgage is being foreclosed or if there are any prior liens.)
							Dollars. Cts.	*Month. Day.*	*Dollars.*	*Dollars. Cts.*		*Dollars.*	*Dollars.*	*Dollars.*	
1	1901	1904	Minn.	Ramsey....	289	161	5,000	Mar. } 1 Sep. }	.....	62 50	8 5	3,000	6,000	6,000	520 Grand Ave., St. Paul. Lot 1, Jas. W. Heathers sub. div. bl'k 7, Terrace Park add. to St. Paul.
2	1899	1904	Minn.	Hennepin.	495	420	5,000	June } 20 Dec. }	.....	8 40	8 5½	6,000	8,600	6,500	2917 Grand Ave., Minneapolis. Lots 9 & 10, bl'k 1 Badgers & Penny's add. to city of Minneapolis.
3	1900	1905	"	"	509	91	15,000	Jan. } 13 July }	.....	350	8 5½	7,500	32,500	12,500	1327 1st Ave. So. Minneapolis. Lot 8, bl'k 1, Pennimans add. to city of Minneapolis.
4	1900	1905	"	"	508	342	4,500	Jan. } 25 July }	.....	107 25	8 5½	2,500	6,500	5,500	1808 Dupont Ave., south. Lot 3, bl'k 50, Groveland add. to city of Minneapolis.
5	1901	1902	"	Benton.....	W	307-8-9	500	Jan. } 1 July }	.....	151 25	8 5½	11,000	3,275	3,000	7 miles from St. Cloud E. ½ of N. E. ¼ and S. W. ¼ of N. E. ¼ and S. E. ¼ of S. ½ of N. W ¼ and N. ½ of S. W. ¼, sec. 9, T. 36 R. 30.
.....	1901	1906	"	"	.....	and 10	5,000	Mar. } 11 Sept. }	.....	84 02	8 5½	.....	12,000	7,000	1942 Irving Ave., So. Minneapolis. Lot 13, bl'k 2 Greens 3rd add. to Minneapolis.
6	1901	1906	"	Hennepin.	520	210	5,000	Feb. } 1 Aug. }	.....	229 16	8 5½	2,000	3,950	2,700	Kittson county. S. ½ sec. 23, S. ½, N. ½ and S. ½ sec. 34 and S. E. ¼, sec. 35 T. 161, R. 48 W.
8	1901	1906	"	Kittson.....	Y	628	10,000	Mar. } 26 Sept. }	.....	85 76	8 5	10,000	6,000	7,000	1811 & 1813 Vine place, Minneapolis. Lot 17, bl'k 1, Hillside, Minneapolis.
9	1901	1906	"	Hennepin.	527	99	6,500								18 Lyndale Ave. North Minneapolis. Beginning at a point on west side of Lyndale Ave, 60 ft. no. of Vine-

9	1901	1906	"	Hennepin.	527	99	6,500	Mar. 30 Sept.			69 51	8 5½	6,000	12,000	8,000	Beginning at a point on west side of Lyndale Ave. 60 ft. no. of Vineland place, thence north 66 ft. thence west 231 ft. thence south 26 ft. Thence east 120 ft. Thence south 100 ft. to Vineland place. Thence east 65 ft. Thence north 60 ft. Thence east 46 ft. place of beginning.
10	1901	1906	"	"	527	134	5,000	May 1 Nov.			141 67	8 5	22,600	25,000	21,500	905 & 511 & 513 Central Ave. Minneapolis. 509 & 511 & 513 Central Ave. Mill Company's add.
11	1901	1906	"	"	516	390	17,000									
				Totals			$78,500.00			None	$6,289 52					

(a) If interest is payable semi-annually, so indicate in this column by the letter in red ink above the figure indicating the rate.

Above figures are correct.
M. D. MANN.
M. M. DAVIS.

157 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON ET AL.
versus
THE MINNESOTA MUTUAL LIFE Insurance Company of St. Paul, Minnesota, *et al.*

C. Equity. 783. Affidavit of Frederick S. Capron.

STATE OF ILLINOIS, *County of Cook,* } *ss:*

Frederick S. Capron, being first duly sworn on oath deposes and says:—

That he is a citizen and resident of the town of Evanston in the county of Cook and State of Illinois;

That he is a member of, and holder of membership certificate number 4031, issued May 26th, 1886 in The Bankers Life Association of Minnesota, reorganized as The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, one of the defendants in the above entitled cause;

That on or about the 13th day of February, 1902, he, affiant, received at his residence aforesaid, from the aforesaid association, the threatening proposition set forth in the papers hereto attached and identified by his, affiant's, signature and marked Exhibits "A," "B," "C" and "D" hereof.

That said threatening proposition has in substance been made to, and the "exorbitant" penalties in said papers set forth have been inflicted upon him, by said association, at divers and sundry times since January 1899.

That he, affiant, has constantly refused to comply with said
158 threatening proposition, persistently made under the said "exorbitant" penalties so inflicted upon him;

That the trustees of said association have taken, and are taking the money held by said association to secure this affiant and his co-members against default in the payment of assessments by the members of said association, and giving it, as in the proposition set forth in the aforesaid papers hereto attached, to the persons who comply with said proposition contained in said papers aforesaid.

And further this affiant saith not.

(Signed) FREDERICK S. CAPRON.

Subscribed and sworn to before me this 24th day of February A. D. 1902.

WILLIAM G. NORKETT,
Notary Public.

[NOTARIAL SEAL.]

159 EXHIBIT "A."

Envelope marked "The Minnesota Mutual Life Insurance Company, St. Paul, Minn.," in left hand corner, stamped with a two-cent stamp, stamped "Cleveland, Ohio, Feb. 12, 6:30 p. m., 1900." Addressed "Fred'k S. Capron, Esq., So. Evanston, Ill. In the lower left hand corner the word "important" appears in red ink. Across envelope is written "Exhibit 'A,' identified, F. S. Capron." On back the receiving stamp appears as follows: "Evanston, Ill., rec'd. Feb. 13, 3:30 a. m. 1902.

160 EXHIBIT "B."

Identified. F. S. Capron.

The Minnesota Mutual Life Insurance Company (organized 1880).

$2,800,000.00 paid in death losses. Assets $1,600,000.00.

George F. Fish, representative, home office, room 21 Fire and Marine bldg.

Trustees:

Charles H. Bigelow, president St. Paul Fire & Marine Ins. Co.
Maurice Auerbach, president Union bank, and St. Paul Title and Trust Co.
John B. Sanborn, John B. & E. P. Sanborn, attorneys.
Crawford Livingston, capitalist and ex president St. Paul Gas Light Co.
James F. R. Foss, Minneapolis ex president Nicollet nat. bank.
Kenneth Clark president Merchants nat. bank.
Albert H. Lindeke, Lindeke, Warner & Schurmeier, wholesale dry goods.

ST. PAUL, MINN., *Feb. 12th*, 1902.

Fred'k S. Capron, Esq., So. Evanston, Ill.

DEAR SIR: When the Bankers Life Association was organized (1880) every body predicted that we would go to pieces in less than five years; instead, however, in twenty years we had paid nearly three million dollars for death losses and had accumulated assets of over $1,000,000.

Again, when the public heard that we were converting our business to the old line basis we heard the same cry on every hand.

In each instance, *we have been successful* notwithstanding the public's attitude; and now as the Minnesota Mutual Life Insurance Co. we stand in the insurance field as a full fledged old line company, stronger in point of assets to liabilities than almost any
161 other old line company in America.

You have heretofore been given an opportunity to transfer your old assessment certificate for the new guaranteed option policy. Evidently you have concluded that a sufficient number would *not* transfer to keep your future assessments from becoming exorbitant.

The fact is, only a scattering few are now carrying the old certificates and these members are rapidly realizing the importance of exchanging their certificates for a policy providing for the full legal reserve.

By making the exchange at once you will avoid heavy assessments and your insurance will be placed upon an indisputably sound basis.

Herewith, you will find application for your signature and return. Credit for the December assessment, recently made, will be allowed provided you return the receipt together with your check for $27.22 and old certificate for cancellation.

On receipt of your certificate, receipt for December assessment and check for $27.22 the new guaranteed option policy will be issued and mailed direct to you

Immediate compliance with the above will conserve your best interests. Awaiting receipt of the necessary papers, return mail.

Yours very truly, GEO. F. FISH.

162 EXHIBIT "C."

Identified. F. S. Capron.

Fred'k S. Capron, So. Evanston, Ill.

(Old line.)

The Minnesota Mutual Life Insurance Company, St. Paul, Minn.

Upon application and without re-examination, exchange of certificate — of membership for policies in the Minn-sota Mutual Life Insurance Company (formerly the Bankers Life Association of Minnesota) will be made as follows:

Age at entrance 59

Certificate No.	4031	Date	May 26/86.	Amount	$2,000
"	" —	"	—	"	—
"	" —	"	—	"	—

Born May 14/27

Amount for which new policy is to be issued, $2,000

Semi annual premium guaranteed option policy. (age 59) $63.50

Amount credited in reduction of new premiums in consideration of exchange, $118.59 to be applied and distributed as follows:

	Applicant pays—	Credits allowed by company.	Total.
	$43.74	$19.76	$63.50
1st year	43.73	19.77	63.50
	43.74	19.76	"
2nd year	43.73	19 77	"
	43.74	19.76	"
3d year	43.73	19.77	"
		$118.59	
4th year			
5th year			

163 Legal reserve, or amount that would have accumulated to this date had policy in fact been issued as of —— 1886 and which will be required to be held at this time according to the actuaries' or combined experience table of mortality on the 4 % basis, and which will constitute a lien on the policy, bearing interest at the rate of 5 %. Said lien, principal and interest to continue until maturity of policy and shall be paid out of the amount insured unless otherwise paid prior thereto. Surplus allotted to the policy shall be applied to the reduction of said lien or the interest thereon $864.18

Table of Loans and Paid-up Policies.

Reckoning from the date of surrender of the original membership certificate.

	First option.	Second option.
At end of—	Loan value. Policy sole security, provided premium for next year be paid and any indebtedness deducted.	Paid-up policy, less the reversionary value of any indebtedness.
3rd year	982	1178
4th year	1022	1224
5th year	1062	1270
10th year		
15th year		
20th year		

164 1880. *A Successful Company.* 1901.

The Minnesota Mutual Life Insurance Company, St. Paul, Minnesota.

Assets January 1, 1901.

United States registered bonds, market value		$604,200.00
$5,000.00 Sioux Falls, South Dakota, 5 per cent. bonds, market value	$5,000.00	
10,000.00 Yankton County, South Dakota, 4 per cent. bonds, market value	10,000.00	
11,850.00 Mayville, North Dakota, 5 per cent. bonds, market value	12,520.25	
25,000.00 Windom, Minnesota, 5 per cent. bonds, market value	26,352.50	
6,000.00 Preston, Minnesota, 5 per cent. bonds, market value	6,429.70	
3,500.00 Detroit, Minnesota, 6 per cent. bonds, market value	3,812.20	
10,000.00 Seattle, Washington, 5 per cent. bonds, market value	10,407.00	
10,000.00 Walla Walla, Washington, 5 per cent. bonds, market value	10,453.40	
5,000.00 St. James, Minnesota, 6 per cent. bonds, market value	5,928.00	
2,000.00 Madison, South Dakota, 6 per cent. bonds, market value	2,302.50	
10,000.00 W. U. Telegraph Co., 4½ per cent. bonds, market value	10,600.00	
15,000.00 St. Paul Gas Light Company, 6 per cent. bonds, market value	17,437.50	
50,000.00 Montana Central Ry. Co., 6 per cent. bonds, market value	66,650.00	
165 25,000.00 C. G. W. Ry. Co., 4 per cent. debentures, market value	22,812.50	
85 shares Merchants National Bank stock, St. Paul, market value	8,500.00	
		219,305.55
Loans secured by first mortgages on real estate		30,000.00
Interest accrued		12,022.91
Interest bearing contract liens on policies		458,382.63
Net premiums, deferred, and in process of collection		27,143.56
Cash in Merchants national bank, St. Paul		58,153.58
Cash in National German American bank, St. Paul		42,364.68
Cash in First national bank, St. Paul		135.50
Cash in office		18.70
Total assets		$1,451,727.11

Our assets.

December 31, 1891.
$356,821.97
December 31, 1893.
$567,942 63
December 31, 1895
$672,073.01
December 31, 1897.
$865,800.68
December 31, 1899.
$918,982.88
December 31, 1900.
$1,451,727.11

Not how big, but how strong.

166 (Old line.)

No. —.

Application for Exchange of Policies in the Minnesota Mutual Life Insurance Company.

I hereby make application to said The Minnesota Mutual Life Insurance Company for exchange of my life insurance certificate or policy and, as a part of my application, make the following statements:

1. My name in full is Frederick S. Capron.
2. The date of my birth is May 14, 1827.
3. In my original certificate, my age, counting to nearest birthday was rated as 59 years.
4. My post office address is in the city of So. Evanston, State of Ill., to which notices and communications may be sent.
5. I now hold certificate — of membership issued upon my life by the Minnesota Mutual Life Insurance Company (formerly the Bankers Life Association of Minnesota), as follows:

Number of certificate.	Date of certificate.	Amount of certificate.	Cash paid to guaranty trust fund.	In force.	
				Yrs.	Mo.
4031	May 26/86	$2000	$59	15	9

6. I hereby surrender said certificate — and exchange it for a policy on the guaranteed option form now issued by your company under which I may obtain insurance during my whole life for $2000 and I hereby request that the new policy for which I have applied shall take effect as of* —— 1886, so that it can be issued
167 to me at my rated age in said certificate, viz., 59 years, with the corresponding premium of $63.50 according to the table of rates now in use, payable now and hereafter every 6 months from the anniversary of said date, and I agree that in consideration of such reduced rate and the taking effect of the policy as of the said date, said policy hereby applied for shall be issued subject to a lien equal to the reserve, to-wit: eight hundred sixty-four & 18/100 dollars ($864.18) that would have accumulated on such policy at this time had it in fact been issued at the said date, computed according to the actuaries' or combined experience table of mortality, on the basis of four per cent. compound interest; and that said lien shall bear interest at the rate of five per cent. per annum, which interest, if not paid in cash at the end of each year, shall be added to said lien and bear interest at the same rate and

on the same terms. Said lien, principal, and interest shall continue until the maturity of said policy, and shall be paid out of the amount insured thereby unless otherwise paid prior thereto; provided, however, that if the amount of said lien, with the accumulated interest, shall ever exceed the reserve for this policy, computed in the manner and on the basis aforesaid, any excess shall be paid by me in cash, on demand.

7. And I request that in consideration of such exchange the sum of $118 59 may be credited me in reduction of future premiums on said policy, and that the same be applied and distributed as follows:

$19.76 on the premium due now 190–, reducing amount of net cash payment to $43.74

$19.77 on the premium due Aug., 1902, reducing amount of net cash payment to $43.73

168 $19.76 on the premium due Feb'y, 1903, reducing amount of net cash payment to $43.74

$19.77 on the premium due Aug., 1903, reducing amount of net cash payment to $43.73

$19.76 on the premium due Feb'y, 1904, reducing amount of net cash payment to $43.74

$19.77 on the premium due Aug., 1904, reducing amount of net cash payment to $43.73

As a condition to my procuring said exchange and receiving said policy hereby applied for, I, the undersigned applicant, do hereby warrant to be true all statements contained in my original application for said certificate, and in any application for reinstatement, and make the same a part hereof, and agree that the same shall apply to and become a part of said guaranteed option policy.

Witness my hand and seal this — day of Febr'y 1902.

—— ——. [SEAL.]

(A hand is here stamped in red, with the words "Read this." "Sign here" is written with red pencil.)

In presence of

GEO. F. FISH, *Agent.*

("Sign and return" is written with red pencil across side of paper.)

* N. B.—The month and day of this date must be the same as that of this application for exchange, and the year stated must be the year in which said date fell within six months of the birthday on which the insured actually attained his rated age. It can be left blank to be filled in at the home office.

169 EXHIBIT E.

Timothy R. Palmer, president; Gen. J. B. Sanborn, vice president; Douglas Putnam, secretary; Charles L. Green, medical director; Clarence E. Secor, field manager; John A. O'Shaughnessy, field manager.

The Minnesota Mutual Life Insurance Company (organized 1880).

$2,800,000.00 paid in death losses. Assets, $1,600,000.00.

George F. Fish, representative, home office, room 21 Fire and Marine bldg.

Trustees:

Carl H. Bigelow, president St. Paul Fire & Marine Ins. Co.
Maurice Auerbach, president Union bank and St. Paul Title & Trust Co.
John B. Sanborn, John B. & E. P. Sanborn, attorneys.
Crawford Livingston, capitalist and ex president St. Paul Gas Light Co.
James F. R. Foss, Minneapolis, ex president Nicollet nat. bank.
Kenneth Clark, president Merchants nat. bank.
Albert H. Lindeke, Lindeke, Warner & Schurmeier, wholesale dry goods.

ST. PAUL, MINN., *Feb. 19th*, 1902.

Fred'k Capron, Esq., So. Evanston, Ills.

DEAR SIR: On Feb'y 12th an application for the transfer of your old assessment certificate was mailed for your signature and return. As the necessary papers for effecting the exchange have not reached us may I not ask for the favor of your prompt action in this matter.

Yours very truly, GEO. F. FISH.

An envelope is attached to Exhibit "E." In the upper left hand corner are the words "The Minnesota Mutual Life Insurance Company, St. Paul, Minn." It is stamped with a two-cent stamp.
170 The stamp "Cleveland, O. Feb. 19, 3:30 p. m., 1902" also appears in the upper right hand corner of the envelope. Same is addressed to "Frederick S. Capron, Esq., So. Evanston, Ills."

171 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, *et al.*
} C. Equity. 783. Affidavit of Wesley L. Knox.

STATE OF ILLINOIS, *County of Cook,* } *ss:*

Wesley L. Knox, being first duly sworn, on oath says that he is a citizen and resident of the town of Evanston, in the county of Cook and State of Illinois.

That he is a member of, and a holder of membership certificate No. 14893, dated October 10, 1892, in The Bankers Life Association of Minnesota, reorganized as The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, one of the defendants herein;

That on or about the 24th day of August, 1901, this affiant received, at his place of business, in the city of Chicago, Cook county, Illinois, by mail from said defendant company, in the ordinary course of business, a printed "Secretary's report for year ending July 31, 1901, as presented at annual meeting Aug. 5, 1901," which printed report is by this affiant duly identified as the printed report hereto attached, and marked "Exhibit A" and made a part hereof as if at length herein set forth, and as being the report by him received as above stated.

WESLEY L. KNOX.

172 Subscribed and sworn to before me this 27th day of February, A. D. 1902.

[NOTARIAL SEAL.] J. K. LAMBERT,
Notary Public.

173 EXHIBIT "A."

Identified, Wesley L. Knox, Feb. 26, '02.

Timothy R. Palmer, president; Gen. J. B. Sanborn, vice president; Douglas Putnam, secretary; Charles L. Greene, medical director; Clarence E. Secor, manager eastern field; John A. O'Shaughnessy, manager western field.

The Minnesota Mutual Life Insurance Company (organized in 1880).

$2,800,000.00 paid in death losses. Assets, $1,600,000.00.

Trustees:

Charles H. Bigelow, president St. Paul Fire & Marine Ins. Co.
Maurice Auerbach, president Union bank, and St. Paul Title & Trust Co.
John B. Sanborn, John B. and E. P. Sanborn, attorneys.
Crawford Livingston, capitalist and ex president St. Paul Gas Light Co.
James F. R. Foss, Minneapolis ex president Nicollet national bank.
Kenneth Clark, president Merchants nat. bank.
Albert H. Lindeke, Lindeke, Warner & Schurmeier, wholesale dry goods.

174 To the members of the Bankers Life Association of Minnesota:

It is with great satisfaction and pleasure that we are able to inform the members that at the annual meeting held August 5, 1901, insurance to an amount exceeding $9,000,000 was represented in person and by proxy; that the secretary's report disclosed a large growth in the assets, a decided increase in financial strength, and a most gratifying condition of company affairs in general, and was promptly adopted; and that articles of reincorporation as an old line company, with "The Minnesota Mutual Life Insurance Company" as its future name, were adopted by an almost unanimous vote, there being but one person who voted against the resolution.

At the close of the meeting one of the oldest of the mortuary assessment members offered the following resolutions:

"Resolved, That it is the sense of this meeting that the officers and trustees are entitled to the thanks of every member of the Bankers Life Association for their able, conscientious and faithful administration of the affairs relating to the management of the company."

The motion was seconded by several others of the mortuary assessment members, and was unanimously carried.

The Minnesota Mutual Life Insurance Company now goes before the world and into the insurance field as a full fledged old line company, stronger in point of assets to liabilities—including
175 legal reserve—than any company west of Pennsylvania with one exception, and equipped with the latest and most attractive forms of policies, based upon the lowest of premium rates; and with a large number of agents in the field will at once commence to write its share of new business.

Although every member holding a mortuary assessment certificate has been given a fair opportunity to transfer to the stipulated premium plan, the management has concluded for a limited time to give a few members remaining on the mortuary assessment plan the privilege of exchanging their assessment certificates for either of the new forms of policies, based upon the same premium rates as other members have been given in the past. The probability of further increase in the mortuary assessments still continues, and for this and other reasons the trustees and officers believe it for the best interests of the members and the company that transfers be made to the new plan in all cases where it is possible.

However, the trustees and officers also desire to impress upon the minds of members who may find it impossible to transfer, and of those who are not disposed to do so but prefer to take the risk of increased assessments, that the rights of the members on the old plan will be fully protected, and that just so long as any member makes payment of assessments and annual dues in accordance with the terms of his contract, and continues his certificate in force, his beneficiary is certain of receiving payment of the full amount promised, upon his death.

176 Assuring you it will afford the officers pleasure to answer all inquiries and furnish any information desired, I am,

Very respectfully yours,

TIMOTHY R. PALMER, *President.*

August 15, 1901.

Secretary's Report for Year Ending July 31, 1901, *as Presented at Annual Meeting, August* 5, 1901.

Cash assets July 31, 1900		$878,069.04
Receipts.		
Premiums	$278,900.46	
Mortuary assessments	107,214.06	
Annual dues	32,497.14	
Guaranty trust fund notes paid	722.00	
Liens paid	639.24	
Interest	36,604.10	
Increase in market value of securities	24,727.83	
Agents and sundry persons	10,914.27	
Sundries	97.27	
		492,316.37
		$1,370,385.41

177 *Disbursements.*

Assessment death losses	$139,000 00	
Stipulated premium death losses	101,826.79	
Com's to and sundry expenses of ag'ts	92,759.20	
Salaries of officers	15,723 26	
Salaries of employés	11,099.62	
Advertising and printing	3,038.56	
Taxes	2,531.02	
Rent	2,343.35	
Collection and exchange	1,668.90	
Guaranty deposits returned to beneficiaries of deceased members	1,064.00	
Medical fees	73.00	
Accrued interest paid at time of purchase of bonds, etc.	2,272.02	
Other expenses	16,956.66	
		390,356.38
Cash assets		980,029.03
Deduct credit bal's of ag'ts and persons		368 95
Net cash assets		979,660.08
Interest bearing liens on policies		597,564.24
Balance of ledger funds July 31, 1901		$1,577,224.32
Net increase in cash assets during year ending July 31, 1899	$17,223.25	
Net increase in cash assets during year ending July 31, 1900	55,750.13	
Net increase in cash assets during year ending July 31, 1901	101,959.99	

178 *Assets.*

U. S. registered bonds			$598,556.25
	Municipal bonds, etc.:		
$9,000	Aberdeen, S. D., 4½ % bonds	$9,168.75	
3,500	Detroit, Minn, 6 % bonds	3,812.20	
2,000	Madison, S. D., 6 % bonds	2,302.50	
11,850	Mayville, N. D., 5 % bonds	12,620.25	
6,000	Preston, Minn., 6 % bonds	6,429.70	
10,000	Seattle, Wash, 5 % bonds	10,407.00	
10,000	So. Omaha, Neb., 6 % bonds	10,692.00	
5,000	St. James, Minn., 6 % bonds	5,928.00	
5,000	Sioux Falls, S. D., 5 % bonds	5,000.00	
7,500	Thief River Falls, Minn., 4½ % bonds	7,912.50	
10,000	Walla Walla, Wash., 5 % bonds	10,453.40	
25,000	Windom, Minn., 5 % bonds	26,352.50	
8,000	Towner Co., N. D, 5 % bonds	9,019.20	
10,000	Yankton County, S. D., 4 % bonds	10,000.00	
25,000	Iowa Central Ry. 5 % bonds	29,125.00	
20,000	Minneapolis & St. Louis R. R. first mtg. gold 4 % bonds	19,775.54	
50,000	Montana Central Ry. first mortgage gold 4 % bonds	66,650.00	
10,000	Northern Pacific gold 4 % bonds	10,100.00	
10,000	Toledo, St. Louis & Western R. R. prior lien gold 3½ % bonds	9,000 00	
15,000	St. Paul Gas Light 6 % bonds	17,437.50	

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10,000	Western Union Telegraph funding and mortgage 4½ % bonds	10,600.00	
8,500	Merchants National Bank stock	8,500.00	
			301,286.04
	First mortgages on real estate		42,700.00
	Cash in Merchants national bank	$24,270.49	
	" " National German American bank	11,895.41	
	" " First national bank	135.50	
			36,301.40
	" " office		9.40
	Policy loans		1,175.94
	Cash assets		$980,029.03
	Liens		597,564.24
	Total assets		$1,577,593.27
	Due agents, etc		368.95
	Balance of ledger funds		$1,577,224.32
	Contained in following funds:		
	Premium fund	$920,550.19	
	Guaranty trust fund	601,477.36	
	Operating fund	30,809.62	
	Contingent fund	18,695.69	
	Mortuary fund	5,691.46	
	Total funds		$1,577,224.32

DOUGLAS PUTNAM, *Secretary.*

180 *Insurance Commissioner's Certificate.*

STATE OF MINNESOTA,
DEPARTMENT OF INSURANCE,
ST. PAUL, *August* 3, 1901.

I, Elmer H. Dearth, insurance commissioner of the State of Minnesota, do hereby certify that I have made a personal examination of all the securities comprising the net cash available assets of the Bankers Life Association of St. Paul, Minn., schedule of which is hereto attached, and find that the same amount to $980,029.03. In addition to this sum the records of the association show the total amount of liens charged against policy contracts which have been transferred from the assessment to the regular reserve plan, to be $597,564.24, making total assets including said liens of $1,577,593.27.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

ELMER H. DEARTH,
[SEAL.] *Insurance Commissioner.*

Across face is written " Wesley L. Knox, 1 / 29 / 02."

181 (Endorsed:) Application for receiver and affidavits of E. B. Trubey, Wesley L. Knox and Frederick S. Capron. Filed March 1st, 1902. Henry D. Lang, clerk.

Service of the within motion by copy admitted this 1st day of March 1902.

Solicitors for Defendants.

182 United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1902, March 10th, 1902.

MONDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. William Lochren, judge; Hon. Milton D. Purdy, U. S. district attorney; Hon. William H. Grimshaw, U. S. marshal; Henry D. Lang, clerk.

J. C. IVERSEN and SAMUEL WRIGHT *vs.* MINNESOTA MUTUAL LIFE INS. CO. ET AL. } C. Eq. No. 783.

The motion of the complainant in the above entitled cause for an order appointing a receiver *pendente lite* for the defendant corporation heretofore noticed for hearing at this time and place and now coming on for hearing, J. F. Byers, Esq., appears as solicitor for and argues said motion on behalf of the complainant and Wm. D. Mitchell, Esq., appears as solicitor for and argues in opposition to said motion on behalf of the defendants.

And after hearing the arguments and statements of the solicitors for the respective parties, and being fully advised in the premises after due consideration, it is by the court ordered that said motion for the appointment of a receiver *pendente lite* for the said defendant corporation be and the same hereby is denied.

A true record,

Attest: HENRY D. LANG, *Clerk.*

183 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON ET AL. *versus* THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, *et al.* } C. Equity. 783.

The Replication of Esdras B. Trubey, Complainant, to the Answer of The Minnesota Mutual Life Insurance Company et al.

This repliant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said

answer, for replication thereunto, says: That he will aver and prove his intervening petition to be true, certain and sufficient in the law to be answered unto; and that the said answer of the defendants is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained material or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said intervening petition he has already prayed.

DILLON & GOETZ,
Solicitors for Complainant.

JOHN F. BYERS, *Of Counsel.*

Replication.
Filed March 11th, 1902.

HENRY D. LANG, *Clerk.*

184 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants. } Order.

This matter having come on to be heard this 10th day of March, 1902, upon the petition of J. C. Iverson, one of the plaintiffs above named, to have the bill dismissed as to him, and to have his name withdrawn from this cause as a party plaintiff, and his bond cancelled, George E. Budd, Esquire, appearing for petitioner J. C. Iverson, William D. Mitchell, Esquire, appearing for defendants, and J. F. Byers, Esq., appearing for plaintiffs Samuel Wright and E. B. Trubey, it being stipulated by counsel in open court that the bond for costs heretofore filed in this cause shall stand as security for all costs accrued to and including the date of this order, which
185 may be awarded to defendants or either of them,

It is ordered that the said J. C. Iverson be and he hereby is permitted to withdraw as a party to this cause, and all proceedings herein are dismissed as to said J. C. Iverson.

It is further ordered that the plaintiffs Samuel Wright and E. B. Trubey be and they here*to* are required to file with the clerk of this court within eight (8) days from the date hereof, a bond in the sum of seven hundred and fifty dollars ($750.00), conditioned to pay all

costs and disbursements, which may be awarded in favor of defendants or either of them against the persons who are now or may hereafter become plaintiffs in this case.

Said bond shall be in the form and with sureties of the same character and qualifications as heretofore required in the case of the bonds for costs heretofore filed in this matter, and on failure to file said bond as herein provided this cause shall stand dismissed.

Dated March 10, 1902.

WM. LOCHREN, *Judge.*

Order allowing J. C. Iverson to withdraw.
Filed, March 10th, 1902.

HENRY D. LANG, *Clerk.*

Entered & termed minutes, vol. 25, p. 132.

186 United States Circuit Court, District of Minnesota, Third Division.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs, and ESDRAS B. Trubey, Plaintiff Intervener,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE CO. ET AL., Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the above named plaintiffs and defendants and their respective counsel and solicitors that the above entitled cause shall be placed on the June 24th A. D., 1902, term of said court calendar, and shall be tried at said term June 14th, 1902.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.
JOHN F. BYERS,
Counsel for Plaintiffs.

Stipulation to place cause on calendar.
Filed June 15th, 1902.

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

187 United States Circuit Court, District of Minnesota, Third Division.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants,
v.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY, Formerly The Bankers Life Association of Minnesota; Charles H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingstone, Kenneth Clark, Albert H. Lindeke, James F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Defendants.

188 United States Circuit Court, District of Minnesota, Third Division.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants,
v.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY, Formerly The Banker's Life Association of Minnesota; Charles H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, James F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Defendants.

Pursuant to notice, stipulation and order in the above entitled cause, the parties thereto, by their respective solicitors, met at the office of the duly appointed special examiner, H. Harcourt Horn, Esq., in the Federal building in the city of St. Paul, State of Minnesota, and the special examiner being present, the following proceedings were had.

John F. Byers, Esq., appeared as solicitor for the complainants, Dillon — Goetz, Esq., of counsel.

189 W. How, Taylor & Mitchell, solicitors for defendants, T. R. Palmer of counsel.

March 20, 1902.

Douglas Putnam, is produced as a witness on the part of complainants and counsel for complainants requests the special examiner to administer the oath to the said witness, at which time counsel for defendants makes the following objection to any further proceedings being had.

Mr. MITCHELL: Messrs. William D. Mitchell, solicitor for defendant and Timothy R. Palmer of counsel appeared before the examiner for the sole purpose of informing the examiner that the order heretofore made in this cause on the 10th day of March, A. D. 1902, requiring complainants to file a bond for costs within eight days from the date of said order has not been complied with, and that by virtue of that order this cause stands dismissed, and the office of examiner is *functus officio*, and the examiner appointed to take the

testimony has no further power or authority or jurisdiction to take said testimony, and the subpœna issued out of this court directed to Mr. W. Douglas Putnam to appear before this examiner is no longer of any force and affect; and said solicitor and counsel for defendants have instructed and do instruct the witness Douglas Putnam not to be sworn nor to give any testimony nor to submit to
190 any examination in the above entitled cause, in response to said subpœna or otherwise.

Mr. BYERS: Mr. Putnam, you decline to be sworn, in compliance with this advice.

Mr. PUTNAM: I do.

Mr. BYERS: Mr. Examiner, as the witness refuses to be sworn, counsel for complainants asks the examiner to take advice as to the nature and effect of this point, and to adjourn this meeting until to-morrow morning, March 21st for that purpose.

Mr. MITCHELL: We object to any adjournment and continuance of this matter.

The further taking of testimony was then adjourned until the further order of the court.

On the 21st day of March, 1902, the special examiner received a communication from counsel for complainants that the bond to be filed was on file at this time, together with an order from the court that the filing of said bond should be regarded as *nunc pro tunc*, and thereupon the examiner gave notice to the solicitors for defendants and to the witness Douglas Putnam that the testimony in this cause would be taken at the above mentioned place on the 22d day of March, 1902, at ten o'clock a. m.

191 On Saturday the 22nd day of March, 1902, pursuant to notice given by the examiner at the request of counsel for complainants in accordance with the order of the court hereinbefore set forth, the parties met at the office of the special examiner in the Federal building, St. Paul, Minnesota, at ten o'clock a. m., and the parties being present by their respective solicitors, the following proceedings are had in the presence of said special examiner.

Counsel for complainants calls as a witness Douglas Putnam, and requests that said witness be sworn.

Mr. MITCHELL: Defendants object to the swearing of this witness, and to the taking of any testimony in this cause, on the ground that the time for taking testimony by the complainants as fixed in the order of the court of February 17th 1902, which limited the time to March the 18th, is still in full force and effect, and that the time so stated in said order has expired, and the order of the court extending the time for the taking of said testimony was made *ex parte*, and without notice to the defendants, and contrary to the rules of equity practice as established by the Supreme Court of the United States; and also on the ground that the purported order heretofore made by the court on the 10th day of March, 1902, directing and requiring the complainants to file a bond in the sum of seven hundred

and fifty dollars to pay all costs which might be awarded in
192 this action in favor of the defendants, on or before the 18th day of March, 1902, and that upon failure so to file said bond this action should stand dismissed, is still in full force and effect; and the purported order of the court made on the 20th day of March, 1902, allowing the bond to be filed *nunc pro tunc* was made *ex parte*, without any notice to the defendants, and is of no force and effect.

The witness, DOUGLAS PUTNAM, is then sworn and testifies as follows:

Examination in chief by Mr. BYERS:

Q. Your name is Douglas Putnam?
A. Yes, sir.
Q. You are the secretary of the defendant corporation?
A. Yes.
Q. How long have you been such secretary?
A. Since 1885.
Q. You during all that time have had charge of the books and papers and correspondence of the defendant corporation?
A. Yes, sir.
Q. And you are acquainted with their contents?
A. Yes.
Q. Are you able to state from the books as to the state of the different funds of the corporation and the different proceedings of the corporation during that time?
A. Yes.
Q. Referring to the different funds of this corporation and their assets, under what heads were these assets carried on the books of the corporation?
A. At what time?
Q. Since you have been secretary.
A. There was the guaranty trust fund, the mortuary fund, the operating fund, the contingent fund, and the premium fund.
Q. Prior to 1898 you had these four funds, the guarany trust
193 fund, the mortuary fund, the operating fund, and the contingent fund?
A. Yes.
Q. Did you not have another, the mortuary reserve fund?
A. Yes, the mortuary reserve fund.
Q. When were these different funds opened, do you recollect?
A. No, I do not.
Q. You don't know when the guaranty trust fund was opened?
A. It was opened at the beginning of the company.
Q. When was the mortuary reserve fund opened?
A. The books show that. I have forgotten the year.
Q. Have you anything here that will show?
A. Yes.

Mr. BYERS: It is understood that the witness may refresh his memory from any memorandum that he may have.

WITNESS (referring to book): 1893.

Q. The mortuary reserve?

A. Yes.

Q. When was the operating fund opened?

A. That was at the organization of the company.

Q. That was in 1880?

A. 1880, yes.

Q. And the contingent fund?

A. 1887.

Q. What was the purpose of the guaranty trust is clearly shown by the charter?

A. Yes, by the charter.

Q. By the charter and by-laws?

A. Yes.

Q. The mortuary reserve fund, for what purpose was that opened?

A. Simply to know the amount of the deposits of deceased lapsed members, unreturnable at death.

Q. Unreturnable at death?

A. Yes.

194 Q. I understand it was opened to keep the lapsed guaranty deposits separate from the other funds?

A. Yes, or any funds.

Q. A portion of the mortuary reserve was always a part of the guaranty trust fund?

A. It was always.

Q. For what purpose was the operating fund opened?

A. To pay operating expenses, the charter shows that.

Q. In this operating fund are you able to state from your books from what items that fund was made up?

A. It was made up of membership fees, and annual dues, and interest on Government bonds, the guaranty trust fund Government bonds.

Q. And I suppose any other interest that might be coming up.

A. The other interest was put in the contingent fund.

Q. Will you state since 1885, the amount of each of the several items that you have stated, that went into the operating fund.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the ground that neither of the complainants in this case became members of the company until subsequent to the date referred to.

Q. I mean for each year, I suppose that is just as easy to produce as any other.

Counsel for defendants objects to the question for the reasons last given.

A. In the year 1885 the company received,

	As membership fees	$18,205.06
	As annual dues	19,085.15
	And as interest	2,504.73
195	In 1886 membership fees	18,320.85
	Annual dues	23,639.65
	Interest	3,045.56
	1887 membership fees	10,046.80
	Annual dues	24,936.53

Q. You didn't state the interest?
A. There was no interest went in that year.

	1888 membership fees	12,291.88
	Annual dues	27,653.04

Q. No interest that year?
A. No interest that year.

	1889 membership fees	17,851.12
	Annual dues	31,583.46
	No interest.	
	1890 membership fees	18,450.80
	Annual dues	34,835.41
	No interest.	
	1891 membership fees	36,218.73
	Annual dues	44,013.74
	No interest.	
	1892 membership fees	121,043.81
	Annual dues	82,406.04
	No interest.	
	1893 membership fees	51,511.50
	Annual dues	73,781.95
	No interest.	
	1894 membership fees	30,148.50
	Annual dues	69,873.14
	Interest	12,650.00
	Incidental items	49.92
	1895 membership fees	29,730.25
	Annual dues	73,549.48
	Interest	15,200.00
	Sundry items	19.50
196	In 1896, membership fees	19,729.36
	Annual dues	72,018.79
	Interest	16,650.00
	Advances to agents	60.03
	Miscellaneous items	17.50
	1897 membership fees	21,007.34
	First years' annual dues	8,059.10

Q. How is that, was it divided?

A. Yes, that was required, that was required to be given for the first year and subsequent years.

Q. Then the first year was?

A. 8,059.10

That was a requirement of the insurance department, that it should be given in that way, the first year and subsequent years.

Q. Well, go ahead then.

A. First year..... 8,059.10

Subsequent years	
Annual dues.....	65,528.30
Interest	20,100.00
Incidental items.....	110.02
1898 membership fees.....	16,046.92
First years' annual dues.....	5,881.99
Subsequent years.....	66,567.63
Interest.....	22,400.00
Sundry items.....	80.99
1899, membership fees.....	3,127.70

Q. Excuse me, in 1899 were these membership fees for assessment memberships?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

197 A. Yes.

Q. This $3,127.70 was for assessment memberships?

A. Yes.

Q. The items you are giving for 1899 refer exclusively to assessment membership, do they?

A. Yes, that went to the operating fund.

First year, annual dues, none		
Annual dues subsequent years		59,150.80
Interest		22,550.00
Sundry items		416.65
1900, membership fees, none		
First year annual dues, none		
Subsequent years annual dues.....		32,501.64
Interest		21,500.
Sundry receipts, three items 75.62,1950.00		524.78

Q. These sundry items are what?

A. Advances to agents repaid, and increase in value of bonds and securities.

Q. How did that increase in the value of bonds and security come to go into the operating fund?

Objected to by counsel for defendants as immaterial, incompetent

and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

Q. That is for 1900?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

198 A. Certain bonds were sold for a profit over book value of $1950.00.

Q. They were sold for more than the book value, and the money went into the operating fund?

A. Yes.

Q. Now in 1901?

A. Membership fees, none.

Annual dues	10,146.48
Interest	20,300.00
Sundry receipts	69.62

Q. That is the history of the operating fund up to date, since 1885?

A. Yes.

Mr. MITCHELL: The history of the income?

WITNESS: Yes, the history of the income.

Mr. BYERS: Yes, I should have said that, the history of the income.

Mr. MITCHELL: Cash income.

WITNESS: It would be cash income.

Q. The distribution of that fund would be practically, that all of these membership fees were paid to agents for retaining the members?

A. Substantially so.

Q. Did the company actually receive any of that money denominated membership fees?

A. In some cases it did, and in some cases it did not.

Q. Sometimes it came into the office?

199 A. Generally it did not.

Q. Where they did not come into the office of their own accord, they were turned over to the agent?

A. Yes.

Q. Now Mr. Putnam, in opening this mortuary fund, for what purpose was that mortuary fund opened?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the ground that the articles and by-laws of the association are the best evidence and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. It was to receive mortuary assessments collected for the purpose of paying death losses.

Q. From what sources were the amounts in that mortuary fund derived?

A. They were derived from mortuary assessments and from transfers from the guaranty trust fund.

Q. From transfers from the guaranty trust fund?

A. Yes.

Q. Can you state the amount of the mortuary fund for each year since the year 1885, with the amounts derived from each of the separate sources that you have mentioned.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and on the ground that the complainants did not become members of the company until long——

200 Q. From transfers from the guaranty trust fund?

A. Yes.

Q. Can you state the amount of the mortuary fund for each year since the year 1885, with the amounts derived from each of the separate sources that you have mentioned.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and on the ground that the complainants did not become members of the company until long subsequent to the date referred to, and that the question is too broad and embraces a period of time antedating the time when either of these complainants became members of the defendant company.

Q. Can you state the amount of the mortuary fund for each year since the year 1885, with the amounts derived from each of the separate sources that you have mentioned, including and since the year 1885?

Counsel for defendants makes the same objection as to the last question.

A. In 1885 received mortuary assessments..... $21,347.12

Q. There were no transfers from the guaranty trust fund that year?

Counsel for defendants makes the same objection as to the last question.

A. I have not got the record for that year.

	1886, assessments.....	$49,428.16
	Transfers from guaranty trust fund to mortuary fund.....	2,089.16
201	1887 assessments.....	71,957.77
	Transfers from guaranty trust fund to mortuary fund.....	3,698.80
	1888 assessments.....	76,277.39
	Transfers from guaranty trust fund to mortuary fund.....	3,519.62
	1889, assessments.....	119,075.55

	Transfers from guaranty trust fund to mortuary fund	1,362.78
	1890, assessments	98,434.43
	No transfers	
	1891, assessments	85,825.77
	No transfers	
	1892, assessments	120,280.57
	No transfers	
	1893, assessments	204,652.62
	Transfers from guaranty trust fund to mortuary fund	7,522.79
	1894, assessments	231,753.64
	Transfers from guaranty trust fund to mortuary fund	5,898.30
	1895, assessments	245,646.18
	Transfers from guaranty trust fund to mortuary fund	4,607.50
	1896, assessments	260,977.02
	Transfers from guaranty trust fund to mortuary fund	4,673.30
	1897, assessments	269,991.06
	Transfers from guaranty trust fund to mortuary fund	3,847.20
	1898, assessments	271,141.92
	Transfers from guaranty trust fund to mortuary fund	3,619.80
	1899, assessments	249,507.55
	Transfers from guaranty trust fund to mortuary fund	1,051.80
202	1900 assessments	164,893.20
	No transfers	
	1901, assessments	84,776.56
	No transfers	

Q. What was the method and purposes of transferring these items from the guaranty trust fund to the mortuary fund?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company, and on the further ground that the articles and by-laws of the association are the best evidence.

A. To carry out the provisions of the charter.

Q. That is not an answer to my question. What use was made of the money transferred from the guaranty trust fund to the mortuary fund?

Counsel for defendants makes the same objection as to the last question.

A. To pay death losses.
Q. To pay death losses?
A. Yes.
Q. And for the reason that the amount in the mortuary fund was insufficient to pay those death losses?

Counsel for defendants makes the same objection as to the last question.

Mr. PALMER: What period of time does that cover?
Mr. MITCHELL: It covers the whole time.

Q. Is that correct?
A. No.

203 Q. Was this mortuary fund account closed at the end of each of the several years which you have mentioned?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

Mr. BYERS: It was closed, was it?
A. Yes.
Q. At what date?

Counsel for defendants makes the same objection as to the last question.

A. December 31.
Q. December 31st of each year?

Counsel for defendants makes the same objection as to the last question.

A. Yes.
Q. Can you state what was the amount in the mortuary fund at the end of each of those several years that I have asked you for, 1885 to the present time?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

Mr. BYERS: When the account was closed.

A.	December 31, 1885	*[$11,093.77]
	1886, December 31	*[16,533.22]
204	1887, December 31st	*[40,416.48]
		$41,416.48
	1888 it was overdrawn, December 31st	18,267.16
	December 31, 1889 it was overdrawn	6,228.83
	December 31, 1890 it was overdrawn	11,044.40

[*Figures enclosed in brackets erased in copy.]

December 31, 1891 balance	14,781.37
December 1892 overdrawn	14,482.31
December 31, 1893 balance	1,693.10
December 31, 1894 balance	6,345.04
December 31, 1895 balance	11,051.92
December 31, 1896, balance	61,523.74
December 31, 1897 balance	83,649.40
December 31, 1898 balance	79,969.72
December 31, 1899 balance	55,626.44
December 31, 1900 balance	14,039.84
December 31, 1901 balance	8,118.76

Q. Now Mr. Putnam, will you explain why during the years 1894 to 1899 when there was a large balance in the mortuary fund amounts were drawn from the guaranty trust fund and set to the credit of the mortuary fund?

Objected to by defendant's counsel as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. That was carrying out the provisions of the charter.

Q. That is not an answer to my question, Mr. Putnam, if you will excuse me, I want a specific answer *to* to why that was.

205 What provision of the charter do you refer to?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. It was on account of lapses.

Q. What is that?

A. It was on account of lapsed members.

Q. What object was there for instance in 1895 in transferring $4,607.50 from the guaranty trust fund to the mortuary fund?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. There was transferred from the guaranty trust fund to the mortuary fund the assessments that the lapsed members failed to pay.

Q. Were all the items included in these various statements of amounts transferred from the guaranty trust fund to the mortuary fund made up of lapses of members?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Substantially, yes.

Q. That they had failed to pay?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes, substantially.

Q. Are these items, for instance the item I referred to the same year 1895, $4,607.50 taken from the guaranty and deposit of the members lapsing?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as calling for the conclusion of the witness.

206 A. Yes.

Q. Were all the amounts in the guaranty trust fund belonging to or contributed by members who lapsed, transferred to the mortuary fund?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as calling for the conclusion of the witness, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

Q. I will change the form of the question. Were all the amounts contributed to the guaranty trust fund by members who lapsed in the payment of their assessments transferred to the mortuary fund from the guaranty trust fund for the years you have mentioned?

Objected to by counsel for defendant as immaterial, incompetent and irrelevant, as calling for the conclusion of the witness, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. No.

Q. Was there any difference in the method of and the reason for transferring the amounts that you have mentioned from the guaranty trust fund to the mortuary fund in the years prior to 1893 and those subsequent to 1893?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, as calling for the conclusion of the witness and
207 on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. The change was made on account of—

Q. Was there any difference?

Counsel for defendants makes the same objection as to the last question.

A. Yes.

Q. State it.

Counsel for defendants makes the same objection as to the last question.

A. Yes.

Q. What was the difference.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company and as calling for the conclusion of the witness.

A. Since 1893 the amount of the assessments on which the member lapsed was transferred from the guaranty trust fund to the mortuary fund and the remaining portion was transferred to the mortuary reserve fund.

Mr. MITCHELL: I move to strike out the answer of the witness as not responsive to the question.

Q. Leaving for the present the mortuary fund, I will take up the contingent fund, which you say was opened in 1887; who directed you to open this contingent fund?

208 Objected to by counsel for defendants as immaterial, incompetent and irrelevant and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. It was opened by the direction of the president.
Q. Mr. Taylor?
A. Mr. Dorr.
Q. He was your authority?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, as calling for the conclusion of the witness and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company and as not the best evidence.

Witness makes no answer.

Q. For what purpose was this contingent fund opened?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company, as calling for the conclusion of the witness and as not the best evidence.

A. It was to receive interest.
Q. It was to receive interest?
A. Yes.
Q. Was that the only object of it?

Counsel for defendants makes the same objection as to the last question.

A. Substantially so at the time it was opened.
Q. At the time it was opened?
A. Yes.

209 Q. Was this contingent fund closed each year at the end of the year?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and because no foundation has been laid for the question, as not the best evidence and as calling for the conclusion of the witness, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. It was balanced of course.
Q. It was balanced of course?

Counsel for defendants makes the same objection as to the last question.

A. Yes, it was balanced.
Q. It was never closed into any other account?

Counsel for defendants makes the same objection as to the last question.

A. No.
Q. Can you state the balances appearing on December 31st of each year to the credit of the contingent fund for the years since the date of its opening, beginning in 1887.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and because the question is too broad and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. December 31, 1887..	$4,206.85	December 31, 1888..	$9,413.91
December 31, 1889..	15,206.37	December 31, 1890..	21,990.43

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December 31, 1891..	28,643.12	December 31, 1892..	26,786.58
December 31, 1893..	32,763.03	December 31, 1894..	50,038.89
December 31, 1895..	69,632.21	December 31, 1896..	69,940.44
December 31, 1897..	114,789.16	December 31, 1898..	144,366.51
December 31, 1899..	106,500.60	December 31, 1900..	36,159.62
December 31, 1901..	56,936.74		

Q. And you say that these amounts in that fund were principally interest from what? From what other funds of the company were these amounts carried to the contingent fund?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. From the operating fund.
Q. And did you close this operating fund at the end of each year?

Counsel for defendants makes the same objection as to the last question.

A. It was closed several times, but not with regularity.

Q. For what purposes, if any, was that contingent fund drawn upon prior to 1894?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. I have not any record showing anything about that.

Q. Were there any drafts upon that contingent fund prior to 1894?

211 Objected to by counsel for defendants as immaterial, incompetent and irrelevant and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. I think there was.

Mr. PALMER: We will give you them later.

Q. Can you state Mr. Putnam, for what purposes, if any, the contingent fund was drawn upon for the year subsequent to 1894 up to 1898?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. I will furnish that at the same time I furnish the other.

Q. Can you state for what purposes this contingent fund was drawn upon for the years 1899, 1900 and 1901, if any drafts were drawn?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. I suggest that that be included also to be furnished this afternoon.

Q. I would also like to have you produce the minute book of the association, for the purpose of showing the transaction at the meeting of the board of trustees, I suppose, at which they adopted or formulated the plan for the guaranteed option policies, and also the meeting at which they formulated the plan for the lien-bearing policies; the annual meeting, of course it is simply the book of minutes of the trustees of the company. I suppose they are in one book.

It is agreed that the book in question will be produced.

212 Q. Waiving that point now, you were a member of the Banker's Life Association, were you not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.

Q. Did you hold one of the so-called assessment certificates of membership in the company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.

Q. Have you exchanged your assessment certificate in that company for a guaranteed option policy in the company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.

Q. So that you now hold no assessment certificate.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. No.

Q. What office does Mr. Bigelow hold in the company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. He is a trustee, chairman of the board of trustees.

Q. Mr. Bigelow has been a member or a trustee ever since the organization of the company, has he not?

213 Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.

Q. Did Mr. Bigelow hold an assessment certificate of membership in the company?

Objected to by counsel for defendants as incompetent, irrelevant and immaterial, and as leading.

A. Yes.

Q. Has Mr. Bigelow exchanged his assessment certificate for a guaranteed option policy in the company?

Objected to by counsel for defendants as incompetent, irrelevant and immaterial and as not the best evidence.

A. Yes.

Q. What position does Mr. J. B. Sanborn hold in the company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. He is a trustee and vice-president.

Mr. MITCHELL: That is all admitted in the pleadings.

Mr. BYERS: No, I think not.

Q. I will ask you generally so that we can put it in form on the record if Mr. C. H. Bigelow, John B. Sanborn, Maurice Auerbach,

Mr. Crawford Livingston and Mr. A. H. Lindeke are not all trustees and have been trustees of the Banker's Life Association?

214 Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. Yes.
Q. They are all or have been trustees?
A. Yes.
Q. And all of them hold assessment certificates in the Banker's Life Association.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. No.
Q. They did not all hold them, did they not?
A. They did not all hold them.
Q. Mr. Sanborn was a holder of an assessment certificate.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. Yes.
Q. What I want to know is about all the trustees, if they did not hold these certificates.
A. I suppose I can furnish that information this afternoon.
Q. Whether they did hold assessment certificates and whether they were not exchanged for guaranteed option policies, and whether any or all of them still hold assessment certificates. Will you get us that information?
A. Yes.
Q. Mr. Courtland M. Taylor was the former president of the association, was he not?

215 Objected to by counsel for defendant as immaterial, incompetent and irrelevant.

A. Yes.

A recess is here taken until one o'clock p. m. the same day, at which time the further taking of testimony is proceeded with as follows:

DOUGLAS PUTNAM.

Examination in chief continued by Mr. BYERS:

Q. I asked you, Mr. Putnam, I think, before dinner, what items of disbursements were made from this contingent fund each year from 1894 to 1898?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Practically the only disbursements were to extinguish the depreciation of the Government bonds, made by transfers aggregating just about $50,000.

Q. To extinguish the depreciation?

A. On the Government bonds transferred from the contingent fund to the guaranty trust fund.

Q. It was carried back from the contingent fund?

A. Yes, carried back.

A. It was carried from the contingent fund to the guaranty trust fund?

A. Yes, to extinguish the depreciation of the Government bonds.

Q. And that amounted as you say to practically how much?

A. Just about $50,000.

Q. You say that was practically the only amount transferred from that fund to the other fund. I will ask you in regard to the
216 guaranteed option policies mentioned in the bill of complaint, and also in the answer, if you have not a resolution in the board of directors or other authority, providing for the issuance of such policies.

A. Yes.

Q. Will you show me that?

A. I will produce the book.

(Witness produces a certain book.)

Mr. Byers: I now wish to offer in evidence the record of the meeting of the board of trustees of the Banker's Life Association for Feb. 6th, 1899, as contained on pages 124 and 125, down to the end of the last clause marked 4, being practically two pages.

Q. To identify the book, this is the book of the minutes of the board of trustees of the Banker's Life Association is it not?

A. It is.

Q. It is kept by you or under your direction as secretary of the company?

A. Yes.

Q. I don't suppose it is necessary to ask if it is in your handwriting.

A. It is in my handwriting.

Mr. Byers: I will now offer in evidence pages 124 and 125 of this book as previously pointed out.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and because no foundation has been laid for the question.

Q. I will ask you if this is record of the meeting of the board of trustees for the date which appears in this book on page 124?

A. It is.

217 Mr. Byers: Now the offer is renewed.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and because no foundation has been laid for the question.

The parts of pages 124–'5 thus introduced in evidence are as follows:

ST. PAUL, MINN., *Feb. 6th*, 1899.

The regular monthly meeting of the board of trustees was duly called, and held at the office of the association this Monday afternoon at three o'clock.

Present: Trustees Bigelow, Auerbach and Sanborn.

Secretary read minutes of meeting held January 3rd, and submitted his final report for December, containing a full review of the year 1898, and then presented report for month of January and all were duly approved.

Secretary informed the board that the court had decided the suit brought by Mrs. Edward C. Lynch, (a resisted death claim) in favor of the company. officers were authorized to pay charge made by by the attorneys, T. T. Fauntleroy and Samuel E. Hall.

Whereas a result of the correspondence between the secretary and Actuary David Parks Fackler is that the following seems an equitable basis upon which members, whose attained age is not over sixty couning to nearest birthday, holding "assessment" policies may exchange them for either "guaranteed option" or "ordinary life" policies, a result greatly to be desired, therefore, be it resolved, that the officers be empowered, until further notice, to make such
218 exchanges upon the following basis:

First. No medical examination to be required.

Second. Premium for new policy to be computed at the attained age.

Third. The surrender consideration to be given old member is as follows:

If his assessment policy has been in force for

1 year credit him an amount equal to the cash he has paid in upon his guaranty deposit, plus 10 % thereof in addition thereto,

2 years credit him an amount equal to the cash he has paid in on account of his guaranty deposit plus 20 % thereof in addition thereto.

3 years credit him an amount equal to the cash he has paid in on account of his guaranty deposit, plus 30 % thereof in addition thereto.

4 years credit him an amount equal to the cash he has paid in on account of his guaranty deposit, plus 40 % thereof in addition thereto.

5 years	"	"	"	"	"	50 %	"
6 years	"	"	"	"	"	60 %	"
7 years	"	"	"	"	"	70 %	"
8 years	"	"	"	"	"	80 %	"
9 years	"	"	"	"	"	90 %	"
10 "	"	"	"	"	"	100 %	"
11 "	"	"	"	"	"	105 %	"
12 "	"	"	"	"	"	110 %	"
13 "	"	"	"	"	"	115 %	"

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14 years	"	"	"	"	"	120 %	"
15 "	"	"	"	"	"	125 %	"
16 "	"	"	"	"	"	130 %	"
17 "	"	"	"	"	"	135 %	"
18 "	"	"	"	"	"	140 %	"
19 "	"	"	"	"	"	145 %	"
20 "	"	"	"	"	"	150 %	"

Where a member has contributed nothing to the guaranty trust fund, no credit is to be given.

Fourth. This surrender consideration shall be drawn out of the contingent fund and deposited in the "suspense account" to the member's credit. Whenever a premium is called for, one-half thereof shall be drawn from this credit, and the remaining half of the premium required under the new policy shall be paid by the member himself in cash, and this method shall be pursued until the drafts covering half of each premium shall exhaust the special surrender credit, after which time the member shall himself pay the full premium. In case the new policy is allowed to lapse, leaving any portion of his credit unused, such balance, after the policy has been cancelled of record, shall be transferred back to the contingent fund."

Q. Now Mr. Putnam, the bill of complaint states that in pursuance of that statement what is called the guaranteed option policy, the form set up in the bill, was issued by this company and was continued to be issued until the time the bill was drawn, is that correct?

220 A. I don't just understand the question.

Q. That the form of policy known as the guaranteed option policy, a copy of which is attached to the bill, was issued by the Banker's Life Association from January first, 1899, until the time the bill was drawn, is that correct?

A. Yes.

Q. Was the policy issued upon the terms and conditions embraced in this statement contained on pages 124 and 125 of the book of minutes of the corporation.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and because no foundation has been laid for the question, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. This was modified subsequently.

Q. It was modified subsequently?

A. Yes.

Q. Were there any policies issued on the basis stated in this record?

Objected to by counsel for defendant, as immaterial, incompetent and irrelevant and because no foundation has been laid for the

question and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. Yes.

Q. Then this clause in it which reads, "This surrender consideration shall be drawn out of the contingent fund and de-
221 posited in the suspense account to the member's credit." Was that plan carried out in issuing these guaranteed option policies?

A. Yes, and afterwards modified.

Q. What time was the modification made?

A. That I don't know. That is, I don't remember the date.

Q. Have you the resolution?

A. No.

Q. How was the plan modified?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, because no foundation has been laid for the question, and on the further ground that it does cover a period antedating the time when complainants or either of them became members of the defendant company.

A. Instead of placing the whole amount to the credit of a man, the draft was made only for the amount that he was at the time entitled to. That is, such reduction in the premium draft was made to meet the reduction in the premiums from time to time, as he paid in the remaining portion of the premium in cash.

Q. I think I grasp your idea, and I will state it to see if it is correct What accounts were drawn from the contingent fund for the full amount of the allowance made to the member in reduction of his premiums, and you passed them to the suspense account; and then afterwards you modified it, so that instead of taking the full amount from the contingent fund you took such amount as had been taken as his premiums had been reduced for that year.

Objected to by counsel for defendants as immaterial, incom-
222 petent and irrelevant, because no foundation has been laid for the question, and on the further ground that it does covers a period antedating the time when complainants or either of them became members of the defendant company.

A. Yes.

Q. In other words, if the amount allowed had been say $60.00 in reduction of his premium, $20.00 payable each year, the amount taken from the contingent fund and passed to the suspense account, instead of being $60.00, would be $20.00 for each year, is that correct?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, because no foundation has been laid for the question, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. That is right.

Q. This modification that you speak of was not then in pursuance of any resolution or authority from the board of directors, but merely as a bookkeeping arrangement?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. It was all mere bookkeeping.

Q. It was all mere bookkeeping?

A. Yes.

Q. I will ask you to state from your books how much was drawn from the contingent fund, and for what purpose, during the years 1899, 1900 and 1901 ending December 31st of each year,
223 when you say the books were closed.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. They were transferred from the contingent fund to the premium fund.

Q. Transferred to the premium fund?

A. Yes.

Q. Excuse me, then instead of transferring from the premium to the suspense account, you transferred directly to the premium fund, is that correct?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. I would say to that substantially yes; that the amount for the year 1899 was $99,613.36; for the year 1900, $66,970.81 and for the year 1901, $69,516.61.

Q. These transfers and the amounts stated were in pursuance of the plan to issue these guaranteed option policies, were they not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. Yes.

Q. And all these amounts were credits given to members of the guaranteed option policies upon premiums provided in the said policies to be paid by them?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and as leading.

A. Yes.

Q. At the meeting of the board of trustees for December
224 24, 1898 the board of trustees provided for having two forms of guaranteed option policies?

A. Yes.

Q. Now, Mr. Putnam, can you state from your books the number of certificate holders of assessment certificates in force at the va-

rious ages for the years ending December 31st, 1898, December 31st, 1899, December 31st, 1900, December 31st, 1901?

A. Yes.

A paper is handed by the witness to counsel for complainants.

Q. Will you state the number of certificates on the assessment plan in force in the Bankers' Life Association or the Minnesota Mutual Life Insurance Company at the date of December 31st, 1898, December 31, 1900, July 31st, 1901 and December 31, 1901.

Mr. PALMER: You mean assessment policies or mortuary assessment certificates?

Mr. BYERS: Mortuary assessment certificates, if you will allow the amendment.

Q. Then we will call them mortuary assessment certificates, and your statement is it is contained on this sheet in column No. 1 and No. 2 on the first page, column No. 1 on the second page, column No. 1 on the third page and column No. 1 on the fourth page, making five columns?

A. Yes.

Q. Will you state from the books the number of mortuary assessment certificates in force in the Bankers' Life Association or the Minnesota Mutual Life Insurance Company on December 31, 1898, December 31, 1899, December 31, 1900, July 31, 1901, and December 31, 1901, giving the number of such certificates at each
225 age for which any of such certificates are or were in force.

Mr. PALMER: I object to the question as involving an absurdity. If you want to know what certificates were in force at a certain date he can give it to you; but the words "are or were" are inconsistent with the first part of your question.

Mr. BYERS: I am willing to take the inconsistency in this case.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and as meaningless.

Q. Will you state from the books the number of mortuary assessment certificates in force in the Banker's Life Association or the Minnesota Mutual Life Insurance Company on December 31, 1898, December 31, 1899, December 31, 1900, July 31, 1901 and December 31, 1901, giving the number of such certificates at each age for which any of such certificates are or were in force at the dates mentioned?

A. There are five at age 19.

Mr. PALMER: Are they in force now? Mr. Byers wants to know if they are or were in force.

Q. They were in force?

Mr. MITCHELL: If you will frame your question so that it can be answered intelligently, Mr. Putnam will answer.

Q. I don't see any necessity for squabbling about this thing. I will state the question again. Will you from your books state how many certificates were in force in the Banker's Life Association, at the date stated, first on December 31, 1898, how many mortuary assessment certificates?

226 A. On December 31, 1898, there were five at the age of nineteen, and one——

Q. Wait a moment. Instead of following that through, will the defendants agree to having this table put in as prepared by Mr. Putnam, instead of taking the time to read it?

Mr. MITCHELL: We will agree to having the examiner make a copy af it.

Mr. BYERS: As Mr. Putnam's statement?

Mr. MITCHELL: Yes.

Q. How many mortuary assessment certificates were in force in the Banker'- Life Association on December 31, 1899, at each age?

Mr. BYERS: Will you consent that a copy of this paper may be made by the examiner as the answer of Mr. Putnam to this question?

Mr. MITCHELL: Yes.

Q. How many mortuary assessment certificates were in force at each age on December 31, 1900?

Mr. BYERS: Will you consent that a copy of this paper may be inserted — the examiner and made the answer of the witness?

Mr. MITCHELL: Yes.

Q. How many mortuary assessment certificates were in force in the Bankers Life Association on July 31, 1901?

Mr. BYERS: Will you consent that a copy of this may be inserted as the answer of the witness?

Mr. MITCHELL: Yes.

227 In response to this admission the examiner appends the following answers to the foregoing questions, to-wit:

Q. Will you from your books state how many mortuary assessment certificates were in force in the Bankers Life Association on December 31st, 1898:

Age.	Number.	Amount.	Age.	Number.	Amount.
19	5	10,000	20	1	2,000
21	9	18,000	22	14	28,000
23	18	36,000	24	28	53,000
25	45	90,000	26	58	116,000
27	85	170,000	28	93	186,000
29	125	250,000	30	154	308,000
31	178	356,000	32	169	338,000
33	225	450,000	34	247	494,000
35	222	444,000	36	342	684,000
37	319	638,000	38	373	746,000
39	430	860,000	40	475	950,000
41	421	842,000	42	493	986,000
43	486	972,000	44	425	850,000
45	442	884,000	46	423	846,000
47	402	804,000	48	425	850,000
49	449	898,000	50	486	972,000
51	467	934,000	52	391	782,000
53	435	870,000	54	364	728,000
55	380	760,000	56	336	672,000
57	239	478,000	58	174	348,000
59	215	430,000	60	158	316,000
61	175	350,000	62	108	216,000
228					
63	90	180,000	64	64	128,000
65	54	108,000	66	66	132,000
67	44	88,000	68	54	108,000
69	36	72,000	70	35	70,000
71	26	52,000	72	34	68,000
73	36	72,000	74	18	36,000
75	12	24,000	76	7	14,000
77	5	10,000			
Total	of both columns				
	12,090	$24,180,000			

Q. Will you from your books state how many mortuary assessment certificates were in force in the Bankers Life Association on December 31, 1899?

Age.	Number.	Amount.	Age.	Number.	Amount.
18	1	2,000	20	5	10,000
21	2	4,000	22	6	12,000
23	4	8,000	24	10	20,000
25	16	32,000	26	28	56,000
27	30	60,000	28	52	104,000
29	47	94,000	30	64	128,000
31	86	172,000	32	116	232,000
33	114	228,000	34	141	282,000
35	157	314,000	36	141	282,000
37	203	406,000	38	214	428,000
39	249	498,000	40	317	634,000
41	325	650,000	42	285	570,000
229					
43	320	640,000	44	343	686,000
45	306	612,000	46	317	634,000
47	291	582,000	48	267	534,000
49	315	630,000	50	350	700,000
51	397	794,000	52	363	726,000
53	301	602,000	54	359	718,000
55	316	632,000	56	310	620,000
57	281	562,000	58	208	416,000
59	156	312,000	60	193	386,000
61	155	310,000	62	161	322,000
63	101	202,000	64	88	176,000
65	61	122,000	66	53	106,000
67	63	126,000	68	44	88,000
69	46	92,000	70	35	70,000
71	33	66,000	72	24	48,000
73	33	66,000	74	33	66,000
75	18	36,000	76	12	24,000
77	7	14,000	78	5	10,000
	Total number		.....	8,978	
	Total amount		.....	.....	$17,956,000

Q. Will you from your books state how many mortuary assessment certificates were in force in the Bankers Life Association on December 31, 1900?

230

Age.	Number.	Amount.	Age.	Number.	Amount.
20	.....	.....	21	2	4,000
22	.....	.....	23	4	8,000
24	.....	.....	25	5	10,000
26	3	6,000	27	9	18,000
28	10	20,000	29	15	30,000
30	13	26,000	31	26	52,000
32	39	78,000	33	59	118,000
34	56	112,000	35	82	164,000
36	63	126,000	37	59	118,000
38	94	188,000	39	83	166,000
40	88	176,000	41	146	292,000
42	132	264,000	43	114	228,000
44	153	306,000	45	165	330,000
46	142	284,000	47	126	252,000
48	164	328,000	49	129	258,000
50	146	292,000	51	152	304,000
52	227	454,000	53	161	322,000
54	144	288,000	55	210	420,000
56	188	376,000	57	159	318,000
58	155	310,000	59	128	256,000
60	91	182,000	61	119	238,000
62	89	178,000	63	103	206,000
64	66	132,000	65	54	108,000
66	30	60,000	67	26	52,000
68	36	72,000	69	27	54,000
70	29	58,000	71	25	50,000
231					
72	23	46,000	73	17	34,000
74	24	48,000	75	25	50,000
76	14	28,000	77	6	12,000
78	4	8,000	79	3	6,000
	Total number.....	.....		4,462	
	Total amount.....	.....		.....	$8,924,000

Q. Will you from your books state how many mortuary assessment certificates were in force in the Bankers Life Association on July 31, 1901?

Age.	Number.	Amount.	Age.	Number.	Amount.
20	.....	.....	21		
22	.....	.....	23	1	2,000
24	.....	.....	25		
26	.....	.....	27		
28	3	6,000	29	4	8,000
30	10	20,000	31	7	14,000
32	15	30,000	33	21	42,000
34	26	52,000	35	23	46,000
36	33	66,000	37	17	34,000
38	38	76,000	39	34	68,000
40	34	68,000	41	31	62,000
42	70	140,000	43	33	66,000
44	50	100,000	45	69	138,000
46	76	152,000	49	59	118,000
48	68	136,000	49	68	136,000
50	50	100,000	51	79	158,000
232					
52	89	178,000	53	98	196,000
54	89	178,000	55	84	168,000
56	99	198,000	57	86	172,000
58	75	150,000	59	76	152,000
60	64	128,000	61	69	138,000
62	34	68,000	63	55	110,000
64	56	112,000	65	49	98,000
66	23	46,000	67	22	44,000
68	10	20,000	69	34	68,000
70	19	38,000	71	25	50,000
72	17	34,000	73	23	46,000
74	19	38,000	75	17	34,000
76	20	40,000	77	10	20,000
78	4	8,000	79	3	6,000
	Total number.....	.....		2,188	
	Total amount.....	.....	.....		4,576,000

Q. Will you from your books state how many mortuary assessment certificates were in force in the Bankers Life Association of December 31, 1901?

Age.	Number.	Amount.	Age.	Number.	Amount.
22	.....	.....	23		
24	.....	.....	25		
26	.....	.....	27		
28	.....	.....	29	2	4,000
30	3	6,000	31	1	2,000
32	5	10,000	33	13	26,000
34	11	22,000	35	10	20,000
36	24	48,000	37	17	34,000
233					
38	10	20,000	39	30	60,000
40	13	26,000	41	10	20,000
42	24	48,000	43	43	86,000
44	25	50,000	45	29	58,000
46	44	87,000	47	46	91,000
48	30	60,000	49	58	116,000
50	37	74,000	51	36	72,000
52	34	68,000	53	78	156,000
54	48	96,000	55	47	94,000
56	59	118,000	57	61	122,000
58	49	98,000	59	52	104,000
60	53	106,000	61	38	76,000
62	40	80,000	63	38	76,000
64	48	95,000	65	20	40,000
66	36	72,000	67	16	32,000
68	13	26,000	69	24	48,000
70	17	34,000	71	22	42,000
72	17	34,000	73	20	40,000
74	14	27,000	75	13	25,000
76	21	42,000	77	9	18,000
78	6	12,000	79	3	4,000
	Total number.....	.....		1,417	
	Total amount.....	.....		.....	$2,825,000

Q. How many mortuary assessment certificates purport to be in force in the Bankers Life Association on December 31, 1900?

A. That is covered by this table.

Q. Can you state from your books in the aggregate how
234 many of those members holding mortuary assessment certificates defaulted on December 1901 in the call on January 2 or later in 1902?

A. Yes.

Q. Will you state how many?

A. Sixty-nine.

Q. Calling your attention to the meeting of the Bankers Life Association held August 5, 1901, your records show that the charter and articles of incorporation were amended so as to make this company what is known as a level premium mutual insurance company, were they not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and not the best evidence and calling for the conclusion of the witness.

Question withdrawn.

Q. There was a meeting of the Bankers Life Association held in St. Paul on August 5, 1901, was there not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and not the best evidence.

A. Yes.

Q. There was such a meeting?

A. Yes.

Q. That was the annual meeting of the association, was it not?

A. Yes.

Q. Did you send out notices to the members of the association of that meeting?

A. Yes.

Q. I will ask you to look at this paper, (showing a paper to witness) and state if that is the form of the notices of that meeting sent out by you.

A. Yes.

235 Q. Did you ever send out any other or different notice of that meeting than one I show you?

A. No.

Mr. BYERS: I will now offer in evidence this notice.

Mr. PALMER: Before the paper is offered in evidence I would like to ask the witness one or two preliminary questions.

Mr. BYERS: Very well.

Mr. PALMER: Had the paper which has been handed to you which I see bears the name written in ink on a corner of it E. B. Trubey, that name written on it? Do you mean to say that that particular notice you mailed to anybody?

WITNESS: Not at all.

Mr. PALMER: That is the form of notice that was used?

WITNESS: Yes, sir.

Mr. PALMER: When you say this was the only notice that was

sent out, you mean it was the only form notice sent prior to that time?

WITNESS: Yes.

Mr. PALMER: We object to the admission of this notice in evidence on the ground that it does not appear that this particular notice was sent to anybody, and for the further reason that it bears upon its face the name of E. B. Trubey, which was certainly no part of anything sent from the office of the defendant, as far as is shown by the evidence.

Mr. BYERS: That part of it is not offered in evidence.

Q. You have stated that is the only form of notice that
236 was sent out of this annual meeting?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and not the best evidence and because no foundation has been laid for the question.

A. That is the only form I recall.

Mr. Byers proposes to read the notice, and counsel for defendants objects to the same as immaterial, incompetent and irrelevant, and not the best evidence.

Mr. PALMER: If it is offered in evidence the original must be offered.

Q. Is that your signature?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. No.

Q. Is that a copy of your signature?

Objected to by counsel for defendants as immaterial incompetent and irrelevant and not the best evidence.

A. Yes.

Said paper is now introduced in evidence and marked Complainants Exhibit "A" hereof.

Q. I will ask you Mr. Putnam, to state the amount of the guaranty trust fund for the years beginning with 1894, on December 31st of each year, that is at the time you closed your books, the same as the other statement that has been given?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and on the ground that the question covers a
237 period antedating the time when complainants or either of them became members of the defendant company.

A. December 31, 1894, guaranty trust fund, balance $452,782.08

Q. Does that include the mortuary reserve fund?

A. No.

Q. Well, go ahead, now 1895.

A. December 31, 1895, balance..... $460,810.93
December 31, 1896, balance..... 484,081.68
December 31, 1897, balance..... 487,309.30
December 31, 1898, balance..... 478,026.30
December 31, 1899, balance..... 366,229.50
December 31, 1900, balance..... 185,769.50
December 31, 1901, balance..... 62,261.11

In addition to that amount, there is another fund called the mortuary reserve fund, which was a part of the guaranty trust fund.

Q. That is a part of the guaranty trust fund that you have given me there. Did I not ask you for the mortuary reserve fund now?

A. No.

Q. Will you state the amount of the mortuary reserve fund then for the same years, if it forms a part of the guaranty trust fund.

A. December 31, 1894, mortuary reserve fund..... 62,742.85
December 31, 1895..... 83,216.00
December 31, 1896..... 107,428.08
December 31, 1897..... 124,177.70
December 31, 1898..... 146,593.08
December 31, 1899..... 246,909.86
December 31, 1900..... 422,181.86
December 31, 1901..... 529,900.00

238 Q. You have made from time to time statements of the business in force to the insurance commissioner of the State of Minnesota, showing the number of policies in force at the end of the current year ending December 31?

A. Yes.

Q. How many such policies were in force on December 31, 1898?

A. Total number assessment certificates in force December 31, 1898, was 12,090.

Q. And on December 31, 1899?

A. That is the total number of certificates of all classes at that time?

Q. Yes.

Mr. PALMER: That is what you asked for.

Mr. BYERS: That is what I meant, but I said assessment certificates.

Q. What is the amount insured?

A. $24,180,000.00

Q. Now the number of certificates and the amount of insurance December 31, 1899?

A. The total number of mortuary assessment certificates and policies in force for the year ending December 31, 1899, was 10,245 covering $22,161,500.00 insurance.

Q. And the same statement for December, 1900?

A. 7,593 certificates and policies, amounting to 18,240,000.00

Q. And the same statement on July 31, 1901?

A. Total, number of assessments certificates and policies, 5978, insurance represented 15,501,500.00.

Q. And for December 31, 1901?

A. 5348 in number representing insurance of 14,160,629.20

Q. Will you state the number of policies of mortuary as-
239 sessment certificates in force in the State of Minnesota on December 31, 1900.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

Q. I will add the amount insured.

A. Total number of assessment certificates and policies 3738, representing insurance of $8,135,500.00

Q. And on July 31, 1901?

A. It was not reported.

Q. It was not reported?

A. No.

Q. On December 31, 1901 then?

A. Amount mortuary assessment certificates and policies reported to the department as being in force, was 2477, representing insurance of $5,186.000.00

Q. In Minnesota?

A. That is in Minnesota, yes. That reduction included removals from the State.

Q. Does it not show that the total number of policies in force in December, 1901, to be 1675?

A. Yes, I beg your pardon, it should be 1675.

Q. And insurance how much?

A. Insuring $3,931.054.78

Q. Instead of the figures you gave before?

A. Yes, instead of the five millions.

Q. I will ask you whether since January 1, or rather December 31, 1898, your company has issued any renewable mortuary assessment certificates?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. I forget just when the last or most recent assessment certificates were issued, but there were very few since then.

240 Q. Very few since then?

A. Yes.

Q. Very few, if any?

A. There were some issued.

Q. Can you state from the books whether any were issued after February 6, 1899?

A. I can from the books, yes.

Q. You are not certain about it now?

A. No.

Mr. BYERS: I think I will have to ask you for that information.

Q. I will ask you to state from the books whether Mr. Bigelow formerly held a mortuary assessment certificate in this company Mr. C. H. Bigelow

A. Yes.

Q. Has he exchanged that?

A. He has.

Q. For a guaranty option policy?

A. Yes.

Q. And he holds now no assessment certificate?

A. He has no mortuary assessment certificate.

Q. Mr. J. B. Sanborn formerly held a mortuary assessment certificate.

A. Yes, sir, three of them?

Q. Has he exchanged those for guaranty option policies.

A. He has exchanged one, so he has in force $4000 in mortuary assessment certificate and $2000 represented by a guaranty option policy.

Q. Who is Mr. Maurice Auerbach?

A. He is a trustee.

Q. He is a trustee?

A. Yes.

Q. Didn't he formerly hold an assessment certificate?

A. He did.

Q. He has exchanged it?

A. Yes.

Q. And he holds no mortuary assessment certificate?

A. No.

Q. Mr. Crawford Livingston is also a trustee, is he not?

241 A. Yes, sir.

Q. He held a mortuary assessment certificate?

A. No.

Q. He did not?

A. No.

Q. Never held one?

A. No.

Q. Mr. Kenneth Clark is a trustee of the company?

A. Yes.

Q. He has held an mortuary assessment certificate?

A. No.

Q. Never held one?

A. No.

Q. Have these gentlemen a guaranty option policy, Mr. Livingston and Mr. Clark?

A. No, but they expect to take out one of the new forms of policy.

Q. Mr. J. F. R. Foss is a trustee of the company?

A. Yes.

Q. Did he formerly hold an assessment certificate?

A. Yes.

Q. Did he exchange?
A. Yes.
Q. He holds no mortuary assessment certificate?
A. No.
Q. Mr. Albert Lindeke is a trustee?
A. Yes.
Q. He formerly held an mortuary assessment certificate?
A. No.
Q. Never held it?
A. No.
Q. Does he hold a guaranty option policy.
A. No., but he expects to take out one of the new forms.
Q. Those names that I have mentioned are all the trustees of the company, are they Mr. Bigelow, Mr. Clark, Mr. Auerbach, Mr. Livingston, Mr. Foss, Mr. Lindeke and Mr. Sanborn?
A. Seven?
Q. Yes.
A. That is all.
Q. Mr. Palmer is the president of the company, is he not?
A. Yes sir.
Q. Mr. Palmer had an mortuary assessment certificate?
A. Yes.
242 Q. Has he exchanged?
A. Not yet; but he is going to exchange it for one of the new forms that we contemplate issuing.
Q. Mr. Courtland N. Taylor was formerly the president of the company, up to when?
A. Up to September 1st, 1900.
Q. Mr. Taylor was — member of the company and held an mortuary assessment certificate?
A. No.
Q. He did not?
A. No.
Q. He never insured in the company?
A. No.
Q. Mr. William R. Merriam was formerly a trustee of the company?
A. Yes.
Q. For how long, do you recollect?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. I should say nearly twenty years.
Q. That is, he was trustee up to nearly two years ago, was he?
A. Yes, about that.
Q. Mr. Putnam, did the Bankers Life Association at one time make a loan to Mr. Wm. R. Merriam while he was trustee of the company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.
Q. It did?
A. Yes.
Q. Has that loan ever been repaid?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. It has been very much reduced.
243 Q. It has been very much reduced?
A. Yes.
Q. It has not been paid?
A. Not in full.
Q. This Merchants Nat. Bank stock is listed among the assets of the company, some shares of the Merchants National Bank stock were listed among the assets of the company, were they not
A. Yes.
Q. Were those shares taken as collateral to Mr. Merriam's indebtedness?
A. Yes.
Q. From what fund if you recollect, was the loan to Mr. Merriam made?
A. The contingent fund.
Q. From the contingent fund?
A. Yes.
Q. Did the company the Bankers Life Association at one time loan some money to Mr. C. H. Bigelow while he was a trustee of the company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.
Q. That loan has been repaid, has it?
A. In full.
Q. Did the company at one time loan some money to Mr. Maurice Auerbach while he was trustee of the company?
A. Yes.
Q. That loan has been paid?
A. Yes.
Q. Mr. Putnam, do you know C. W. Leonard?
A. No.
Q. C. W. Leonard?
A. Yes, E. W. Leonard.
Q. E. W. Leonard I mean.
A. Yes.
Q. What relation did he bear to the Bankers Life Association in 1899 and 1900?

Objected to by counsel for defendants as immaterial, in-
244 competent and irrelevant and not the best evidence and calling for the conclusion of the witness.

A. Soliciting agent.
Q. He was soliciting agent and had charge of the State of Wisconsin.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, because no foundation has been laid for the question and calling for the conclusion of the witness and also as leading.

A. No, I guess not.
Q. What was his business.

Counsel for defendants makes the same objection as to the last question

A. Soliciting agent for the company.
Q. His principal business was to secure exchanges of mortuary assessment certificates for guaranty option policies, was it not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, because no foundation has been laid for the question and calling for the conclusion of the witness.

A. He devoted his time to it very largely, yes.
Q. Do you know Mr. Joseph Friedlander?
A. Yes.
Q. The same Friedlander was in the employ of the company?
A. He represented the company as soliciting agent.
Q. As soliciting agent?
A. Yes.
Q. When?
A. He had been with the company five or six years.

245 Mr. BYERS: I believe that is all I wish to ask you at present. I want to inquire about the lien policies of this company that is the policies bearing liens, as to their amount; and at some time during the next week before the time of taking our testimony expires I may call upon you for information upon that point. I think that is all, there may be some things that I have omitted in the way of information, and if so I will give you notice, at least twenty-four hours' notice.

The further taking of testimony in this cause is now adjourned until ten o'clock a. m. Monday morning, March 24th, 1902.

246 The parties being present by their respective solicitors at the office and in the presence of the special examiner, at 10 o'clock a. m. March 24, 1902, the following proceedings are had.

DOUGLAS PUTNAM.

Examination in chief continued by Mr. BYERS:

Q. How many of the mortuary assessment certificates have you changed over into guaranteed option policies since December 31, 1901, do you know?

A. No.

Q. You say you cannot state it?

A. No, I cannot.

Q. You can ascertain that, without much trouble, can you?

A. Yes.

Q. I will ask you to ascertain that then?

A. Very well.

Q. In your statement concerning the operating fund made on Saturday, I understood you to say that there was no interest carried to that fund for the years 1887, 1888, 1889, 1900, 1901, 1902, and 1903. Will you please state what was the amount of the interest carried to the guaranty trust fund for those years?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. I don't know, I will have to find out.

Q. I thought you had that.

A. I think I have the interest that all the funds received
247 during those years, but not the interest received in the guaranty trust fund by itself.

Q. By itself?

A. No, I think I have the amount for the guaranty trust fund for each of those years.

Q. Will you state the interest in all the funds?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. In 1887 the interest receipts were....	$4,186.85
In 1888 the interest receipts were.....	5,207.06
In 1889 the interest receipts were.....	5,735.60
In 1890 the interest receipts were.....	6,676.49
In 1891 the interest receipts were.....	6,511.27
In 1892 the interest receipts were.....	11,284.28
In 1893 the interest receipts were.....	11,286.94

Q. From what other funds did you draw any interest during those years?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the ground that it covers a period antedating

the time when complainants or either of them became members of the defendant company.

A. There would be interest from probably all the funds, being interest on bank deposits at least.

Q. What was done with the interest that you have mentioned from those funds during the years from 1887 to 1893, inclusive?

248 Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. They were placed in the contingent fund.

Q. Will you state the amount of the guaranty trust fund for those years, from 1887 to 1893?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company, and for the further reason that this matter has already been covered by questions and answers.

Mr. BYERS: Excuse me, this first statement with regard to the guaranty trust fund was from 1894.

A. The balance in the guaranty trust fund December 31, 1887, was..... $165,732.27
Balance December 31, 1888 was..... 186,379.35
Balance December 31, 1889 was..... 212,448.17
Balance December 31, 1890 was..... 236,357.17
Balance December 31, 1891 was..... 297,877.22
Balance December 31, 1892 was..... 499,960.14
Balance December 31, 1893 was..... 453,599.45

to which should be added the mortuary reserve fund.

Q. For what year?

249 A. For this year ending December 31, 1893, a balance — 40663.70 and each year a balance.

Q. This guaranty trust fund and mortuary reserve fund were invested in Government bonds as I understood, were they not, at all times during the history of this company?

A. Yes, as far as the cash less a certain portion, cash on hand, it was invested in Government bonds, and a portion of the fund was represented by guaranty trust fund notes.

Q. Did those guaranty trust fund notes bear interest?

A. No.

Q. Can you state from your books what was the amount of the guaranty trust fund notes on hand on December 31 at the end of the years from 1887 to 1901 inclusive?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period

antedating the time when complainants or either of them became members of the defendant company.

A. Yes.
Q. Will you please state it?

Objected to by counsel for defendants as immaterial, incompetent, and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. The guaranty trust fund notes on policies in force were:

December 31, 1885	$29,527.
December 31, 1886	28,595.25
December 31, 1887	14,370.50
December 31, 1888	20,096.25
December 31, 1889	36,841
December 31, 1890	51,826.75

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December 31, 1891	92,771.75
December 31, 1892	245,883.25
December 31, 1893	157,770.25
December 31, 1894	103,922.50
December 31, 1895	104,605.
December 31, 1896	75,089.42
December 31, 1897	71,982.84
December 31, 1898	55,918.25
December 31, 1899	12,339.25
December 31, 1900	None.
December 31, 1901	None.

Q. You say that the amount of cash on hand belonging to the guaranty trust fund for these years was a certain amount?
A. Yes.
Q. Have you any statement of the amount?
A. Yes.
Q. You may state the amount of cash on hand during those years 1885 to 1901, inclusive, belonging to the guaranty trust fund, according to your books.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and on the further ground that it covers a period antedating the time when complainants or either of them became members of the defendant company.

A. Cash in guaranty trust fund as shown by the books of the company.

December 31, 1885	$5,931.69
December 31, 1886	18,031.81
December 31, 1887	7,036.77
December 31, 1888	7,533.10

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December 31, 1889	5,507.17
December 31, 1890	8,355.42
December 31, 1891	12,538.17
December 31, 1892	10,051.89
December 31, 1893	14,579.20
December 31, 1894	10,078.33
December 31, 1895	4,849.68
December 31, 1896	10,492.26
December 31, 1897	3,326.46
December 31, 1898	9,908.05
December 31, 1899	2,390.25
December 31, 1900	1,989.50
December 31, 1901	661.11

Q. Do you know what the average rate of interest on the Government bond in which the guaranty trust fund have invested has been?

A. No.

Q. Withe regard to this operating fund, can you state from the books the amount of money in the operating fund on December 31 of each year from 1894 to 1901, inclusive.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.

Q. Will you state?

Counsel for defendants makes the same objection as to the last question.

A. Cash in the operating fund as shown by the books of the company.

	December 31, 1894	$47,842.66
	December 31, 1895	47,361.95
	December 31, 1896	17,367.49
252	December 31, 1897	20,875.12
	December 31, 1898	56,493.97
	December 31, 1899	24,891.69
	December 31, 1900	47,393.53
	December 31, 1901	4,931.97

During some of those years there were items in this fund other than cash.

Q. In what years were the other items than cash, and what were the items?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Beginning with the year 1894?

Q. Yes, these other items would be in addition to the amounts stated before?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes, on December 31, 1896, there were certificates, St. Paul city certificates of indebtedness, $35,000.00, accrued interest $300.00.

Q. That is interest on the certificates of indebtedness?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. I presume so.

December 31, 1897 certificates	$35,000.00
December 31, 1900, Montana Central Railway bonds.	20,100.00
Mortgage	15,000.00
Accrued interest	600.00
253 Agent's balance	9.54

Q. Can you state from your books when the premium fund of this company was opened?

A. Not now; we have not got it here.

Q. Have you the minute books? During what year would be sufficient.

A. 1899.

Q. From what sources was this premium fund made up?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and as not admissible under the pleadings.

A. From premiums.

Q. Paid by whom?

Counsel for defendants makes the same objection as to the last question.

A. Paid by the policy holders.

Q. Paid by policy holders holding guaranteed option policies?

A. Yes, holding guaranteed option policies and legal reserve policies.

Q. That was all guaranteed option policies?

A. Yes, holding guaranteed option policies; this premium fund was made up from premiums from guaranteed option policies, was it not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and as not admissible under the pleadings.

A. Yes.

Q. To what accounts on your books were the credits to the premium fund charged? Can you state?

Counsel for defendants makes the same objection as to the last question.

A. I don't quite understand the question.

254 Q. In what other accounts on your books were the credits to this premium fund charged?

Counsel for defendants makes the same objection as to the last question.

A. Cash.

Q. To cash?

A. Yes.

Q. Were not credits to this premium fund charged to your contingent fund?

Counsel for defendants makes the same objection as to the last question.

A. A portion, yes.

Q. Were those portions so charged to the contingent fund those that you stated on Saturday for the years 1899, 1900 and 1901?

A. Yes.

Q. Have you the statement made by you to the members of the association some time in August 1901, the first one that was sent out by you showing the assets and liabilities of the company at that time.

A. No.

Q. Have you a copy of it?

A. There are copies of it in the records in the collection office.

Q. Calling your attention, Mr. Putnam, to the so-called secretary's report for the year ending July 31, 1891, as presented at the annual meeting August 5th, 1901, I will ask you if this paper to be marked Complainant's Exhibit B when produced, is a correct copy of the statement sent out to the members of the Banker's Life Association on or about August 15th, 1901.

255 A. Yes.

Q. I notice in this report, Mr. Putnam, among the assets stated, "interest-bearing liens on policies $597,564 24" Is that a correct statement from your books of the amount for such liens on such policies at that time?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.

Q. What was and what is the form in which the lien on the policies mentioned in that report appears on your books?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and also because it does not appear that the lien is in any form on the books.

Q. I will ask you in what form it appears on the books, If it does not appear at all on the books you can so state.

A. As a ledger account.

Q. As a ledger account?
A. Yes.
Q. Are there any lien notes, or is there any lien not in the hands of the company to represent this lien?
A. Yes.
Q. On policies?
A. Yes.
Q. Have you the notes?
A. Yes.
Q. Have you a copy of one of these lien notes?
A. No.
Q. Where are these lien notes?
A. At the office.
Q. Will you produce one of these notes, or a copy of one? If you please, just as you prefer. A copy of a lien note which is substantially in the form in which these lien notes are made, and also state the amount of these lien notes.

256 Mr. MITCHELL: At what time, when?
Mr. BYERS: At this date, July 31st, 1901.
Mr. MITCHELL: You have got the amount already. He has just testified to that.

Q. Have you lien notes for the entire amount mentioned?
A. Yes.
Q. You or the Bankers Life Association issued policies during the years 1899, 1900 and 1901, having or bearing liens on the policies as against the interest of the member holding the policy, did it not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and not the best evidence.

A. These notes are secured by the policies. That is, the lien notes are secured by the policies.
Q. The lien notes are secured by the policies?
A. Yes.
Q. Can you show from your book of minutes the resolution or action of the board of trustees of the Bankers Life Association providing for the issuance of policies bearing liens or chargeable with liens against it.

Mr. MITCHELL: That was shown on Saturday in the resolution of Dec. 24.
Mr. BYERS: It is not in evidence. There is one page I did not offer.

A. December 24, 1898, there is no lien policy embodied in that.
Q. There is no lien policy embodied in that?
A. No.
Q. So it does not appear from the books that any authority was

ever given by the board of trustees for the making of lien
257 policies other than is contained in the amendment to the by-laws and the articles of incorporation of December 24, 1898.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and calling for the conclusion of the witness.

A. The books of the company do show the approval of the trustees.

Q. Where?

A. The books at the office.

Q. What books?

A. The secretary makes monthly reports showing these policies as they issue from month to month, and the trustees themselves hold such policies.

Q. There is no resolution or other action of the board of trustees than appear upon your minute books, the minute books of the corporation referring to these lien-bearing policies, than is shown in the amendment of the articles and the by-laws, passed on Dec. 24, 1898.

Mr. PALMER: I object to the question, as immaterial, incompetent and irrelevant and calling for the conclusion of the witness, and as leading, and because counsel says "referring;" I presume these records do refer to lien policies; but it is one thing to refer to lien policies, and it is another thing to adopt the form of a lien policy.

Q. I will amend the question then. Is there on the minute books of the corporation any resolution or direction by the board of trustees directing the issue of lien-bearing policies?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as calling for the conclusion of the witness
258 as to the authority he assum-s from the action of the trustees.

A. As far as I know there is no resolution other than simply authorizing the issuance of lien policies.

Q. These minute books are kept under your direction, are they not?

A. They are.

Q. And practically kept by you?

A. Yes.

Q. When these lien notes were taken on these policies, had the amount represented by the lien in any case been paid in to the company?

Objected to by counsel for defenda-ts as immaterial, incompetent and irrelevant.

A. Yes.

Q. How many of these notes, lien notes, represented money that had actually been paid in to the company?

A. I don't know how many.

Q. Can you state from the books how many?

A. Yes.

Q. Isn't it a fact, Mr. Putnam, that in nearly all the cases, or in practically all the cases these lien notes were taken for the amount of the reserve that would have accumulated on these policies if they had been issued at the date on which they purported to have been issued?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, because no foundation has been laid for the question and not the best evidence.

A. Substantially so.

Q. I show you this policy, and ask you if that was the policy actually issued by the Bankers Life Association

259 Objected to by counsel for defendants as immaterial, incompetent and irrelevant and not the best evidence.

A. Yes.

Q. That is signature and the signature of Mr. Taylor who was then president of the company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and not the best evidence.

A. Yes.

Q. And the corporate seal of the company?

Counsel for defendants makes the same objection as to the last question.

A. Yes.

Q. This — practically the form of policy issued in all cases where liens were taken against the policy, is it not?

Objected to by counsel for defendants as immaterial incompetent and irrelevant and not the best evidence.

A. No; there were a number of changes.

Q. In what particulars, in relation to the lien or other things?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and not the best evidence.

A. Different forms; the policies will show for themselves.

Mr. BYERS: I will ask you then to produce this afternoon each of the different policies or forms of policy issued by the company, bearing liens.

Q. Leaving this subject of the policies, have you the
260 minutes of the meeting of August 5/01 of the Bankers Life Association?

A. Yes.

Q. You may state the number of persons actually present at that meeting, as appears from the minute book, and the amount of insurance represented by them.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. 43 members, representing insurance to the amount of $156,000 in person.

Q. All the balance of the representation at that meeting was by proxy then, was it not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and because there is no showing of the amount of proxies, or of the fact that any one was represented by a proxy.

Q. The balance of the representation at that meeting was by proxies, was it not?

Counsel for defendants makes the same objection as to the last question.

A. Yes.

Q. And the amount of insurance that was represented by proxies at that meeting was how much?

A. $9,109,000.00.

Q. Will you state from your books what was the total amount of insurance in force in the Co., on July 31, 1901, as it stood on the books?

A. July 31, 1901, total insurance in force was $15,501,500.00.

Q. The book of minutes shows by whom the votes were
261 cast as proxies, does it not?

A. Yes.

Q. What persons cast votes at that meeting, and what amount was cast by each proxy vote?

A. The board of trustees cast votes that represented insurance to the amount of $8,910,000.00. Douglas Putnam $147,000.00

A. H. Belknap	$38,000.00
Charles H. Bigelow	6,000.00
P. A Eagan	6,000.00
F. B. Dodge	2,000.00

Q. Has, as appears from your books, any money or funds been credited to the contingent fund or to the guaranty trust fund charged to or taken from the premium fund?

A. Yes.

Q. Can you state the amounts?

A. I will change that answer, none to the contingent fund, but to the operating fund.

Q. So none has been passed to the contingent fund or to the guaranty trust fund, either?

A. No.

Q. Were the expenses of the association, whether chargeable to guaranteed option policies or to mortuary assessment certificates, all charged to the operating fund during the years 1899, 1900 and 1901?

A. No.

Q. They were not charged?

A. No.

Q. What was the method that was followed in charging the expenses of the association to the different funds, during those years?

A. There were certain expenses that clearly belonged to one class or the other; to the guaranteed option policies, or to the
262 mortuary assessment certificates, and those expenses were charged to these respective classes. There were certain other expenses that could not be said to belong wholly to one class or the other; and these were divided *pro rata* at the end of the year on the basis of policies of insurance in force in the respective classes, month by month, during the year.

Q. Were these *pro rata* arrangements classed on the books every month?

A. No; at the end of the year.

Q. At the end of the year?

A. Yes.

Q. Now then, these expenses that clearly belonged to the guaranteed option policies were charged to the premium fund?

A. Yes.

Q. And those that were of a mixed class, where you could not determine accurately to what class they belonged, were charged to the operating fund were they not?

A. Yes; at the end of the year the proportion of expense due from the premium fund was transferred from the premium fund to the operating fund.

Q. To the operating fund?

A. Yes.

Q. That is the operating fund received credit equal to the amount that had been charged to the operating fund in excess of what was actually due?

A. After pro-rating.

Q. From the mortuary assessment certificate members, according to that arrangement?

A. Yes.

Q. You can state from the books the amount of salaries paid to the different officers of the company, can you?

A. Yes.

Q. In 1899 what salary was paid to the president?

A. I will have to get that from the books.

Q. Have you not got it there?

263 A. No. Mr. Taylor's salary was $3,000 a year.

Q. Always was that?

A. Yes.

Q. I would just as soon have you state from memory, where yo
can.

A. The president's salary was $3,000, and the secretary's wa
$3,250.

Q. What was the salary of Mr. Bigelow?

A. Mr. Bigelow had no salary as treasurer.

Q. No salary as treasurer?

A. No.

Q. But as trustee?

A. $75, I will have to find out about that. That is for the yea
1899.

Mr. BYERS: I think in this examination as to this expense accoun
may be tedious, and it may be very brief; I think it would be bette
for the accommodation of the parties, as well of myself, to have th
examination held at the office of the company; will that not b
better?

WITNESS: We can get it here this afternoon.

Mr. BYERS: You will need to produce your expense ledger.

Mr. MITCHELL: We have got it in proper shape.

It is then agreed that the parties shall meet at the office of th
defendant company, to which place at 2 o'clock the further takin
of testimony is now adjourned.

264 Parties by their respective solicitors, met pursuant to ad
journment at the office of the defendant company, and th
special examiner being present, the further taking of testimony i
proceeded with, as follows:

DOUGLAS PUTNAM.

Examination in chief continued by Mr. BYERS:

WITNESS: Before we begin perhaps it would be better to take up
a matter of one or two slight corrections that I desire to make, Mr
Byers. You asked whether this $597,000.00 was all *leins* or not; I
said, it was practically. Now I desire to say it is all liens.

Mr. BYERS: The paper heretofore referred to as Exhibit "B," is
now offered in evidence.

The same is objected to by counsel for def'ts as immaterial, in-
competent and irrelevant.

WITNESS: The other is this: Upon referring to the trustees' book
of minutes of their meeting held April 11, 1900, I find on page 198
that it states the following: The object of the meeting was to ap-
prove of the new policy to be issued subject to a lien. After due
consideration, the trustees present authorized its officers to eliminate
from the application the proxy c-ause; and also the clause by which
the applicant gives consent to the change of article ten; and that
there might be no delay in issuing the policy, the officers were au-

thorized to do so as soon as Timothy R. Palmer approved of its form.

265 Q. That is with reference to these lien policies?

A. Yes. Further that the secretary submit to the board each month a statement showing how many of these lien policies were issued during the month. And at each time the report as made was ratified by the board.

Q. That is, they approved your report, you mean?

A. Yes. They approved my report.

Q. I will first take up the statement of July 31 1901 referring to Exhibit "B;" I find a statement guaranty trust fund $601,477.36; operating fund $30,809.62 C. F. $18,695.69 Mmortuary fund $5,691.46. That is, your books show that this is a correct statement of these funds, at that time, do they not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence, and we further object to the offering in evidence of Exh. "B," as being only a part of the printed statement which Mr. Putnam said was sent to the holders of mortuary assessment certificates and we would like to have it entered on the record that this Exhibit "B" was by counsel for complainants torn off from the form identified by Mr. Putnam, and is only part of the printed form to which he testified.

A. Yes, unless as affected by the market value over the book value.

Q. So this is practically a correct statement of the funds at that date?

A. Yes.

Q. As shown by your books?

A. Yes.

Q. In regard to these assets, this statement shows United States registered bonds $598,556.25; is that a correct statement from your books of the amounts of United States bonds held by the

266 company at that time.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. Yes, unless affected by market value over book value.

Q. I notice among these stocks and bonds listed in this statement a large number of bonds other than United States bonds; will you state to what fund those bonds were credited on the books of the company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. I can state by referring to the books.

Q. Were not all these bonds that were listed there credited to the premium fund of the association.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. Yes; but I am not sure that all of them were on that date.

Q. Merchants National Bank stock, $8,500; I suppose that is 85 shares were those credited to the premium fund or to the guaranty trust fund, or do you know?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. I can state by referring to the books; it was not credited to the guaranty trust fund.

Q. It was not credited to the guaranty trust fund?

A. No.

Q. You know that?

A. I know that.

Q. This statement shows premium fund $920,550.19, is that a correct statement of the premium fund, as shown by the
267 books of the incorporation on that date?

Objected to by counsel for defendants as immaterial, incompetent and as not the best evidence.

Q. July 31, 1901.

A. Yes, except as affected by market value over book value.

Q. In other words, if the market value was above that given in this statement, the value would be larger?

A. No. These bonds would foot up just the same. If there was any increase made in one place it would be in the other place also. Whether these are market values or book values, I don't know. The books will show.

Q. Will you ascertain from the books just simply as to whether the amounts of value of the bonds given in that statement are the book values or the market values?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. They are the book values.

Q. Can you state from the books the items of expense for the year 1899, and 1900? to what funds those items of expense were charged?

A. Yes.

Q. Will you please so state? (Witness produces another book) This statement is made from your books?

A. Yes. The total expenses for 1899 were $101,734.42; and of this amount there were charged to the premium fund, commissions on guaranteed option policies $32,449.22.

268 Q. That was premiums?

A. That was premiums. That was commissions charged to premium fund.

A. Well,

A. Premium fund was also charged medical fees $804; and operating fund was charged with commissions on mortuary assessment certificates $4,094.10, and medical fees taxed on the same $598; the

operating fund was charged with that; and that leaves a balance of $63,789.10.

Q. There was nothing else charged to operating fund except these agents' commissions and examination fees?

A. That is all that was charged direct

Q. Direct?

A. Yes.

Q. And that leaves a balance of how much?

A. $63,789.10 to be divided *pro rata* between the holders of mortuary assessment certificates and guaranteed option policies upon the basis of the insurance in force.

Q. That is sufficient. That is, this $63,789.10 is divided up how; and of what items did that expense consist?

A. That I will have to itemize downstairs.

Q. You have not got the items there?

A. Not here, no.

Q. We will call for these items. Passing that for the moment we will go to the expense account for 1900, Can you state from the books what the expenses for the year 1900 were, and how they were incurred, and to what funds charged.

—. Yes.

Q. Please state?

A. Premium fund.

Q. Perhaps you had better give the total amount.

A. That I will have to give later. There was charged to
269 premium fund commissions $64,277.77; medical fees $138; to close agents' accounts $817.30; rent of agents' offices $1,095.45; field manager's traveling expenses $1,789.68; that is, superintendent of agents, traveling expenses; superintendent of agents, salary $6.000, actuary $1,182.00; agents' expenses $763.67; incidentals, $123.13. The operating fund was charged with furniture $271.25, medical library, $27.65. And, aside from these charges to the operating fund and the premium fund there have been incurred during the year 1900 the following items of expense, which are to be charged *pro rata*, or were charged *pro rata* to the operating fund and the premium fund in proportion to the amount of assessments and guaranteed option policies in force.

Q. That you have stated before.

A. No. We come to the proportion which is the ratio of $14,001,200.00 to $8,019,750.00 as shown by the following statement.

Q. I don't care about that.

A. Here is a statement showing the amount of insurance.

Q. That you have given before.

A. No, the items that were divided *pro rata;* rent of home office $1,440; taxes $3,161.31; advertising $4,027.57; collections $1905.62; stamps $2173.05; incidentals $3,136.03. Legal expenses $5,804.58; office employees $8,427.36; salaries of officers $9,916.60; salaries of trustees $4,255.00; making a total of $44,247.12. The amount, therefore, that was charged to the operating fund on account of mortuary

assessment insurance was $28,132.88; and the amount that was charged to the premium fund was $16,114.24.

Q. That is on account of the guaranteed option policies?

270 A. Yes.

Q. Will you make the same statement of items for the year 1901?

A. Medical fees $68.00; premium fund commissions $64,080.60; salaries of field managers and expenses of agents $13,630.42; rent of agents' offices $632.10; printing and stationery $3,775.78; advertising $1,159.30; Ins. department fees and agents' licenses $2,177.11. Actuary's fees and expenses $3,943.75; auditor's fees $671.00; officers' traveling and sundry expenses $673.55; revenue stamps $755.20, sundries $838.46; making a total of $91,721.72. The operating fund was charged with $763.43 account of sundry items, and contingent fund with $27.52, and in addition to the foregoing there were incurred expenses during the year 1901, which from the nature of the expenses, are pro rated between the premium fund and the operating fund in proportion to the average amount.

Q. You need not make that statement again.

A. Mortuary assessments insurance and guaranteed option policies in force during the year 1901; and the ratio is on the basis of mortuary assessment insurance and guaranteed option insurance as $8,561,000 is to $129,741,000; that is, substantially as 31 is to 69 per cent. This ratio was arrived at by taking the month's insurance in force from month to month.

Mr. BYERS: I object to the witness making any statements at this time.

Mr. MITCHELL: He just stated how the percentage of the total insurance was arrived at.

271 Mr. BYERS: I object to the answer of the witness in that form, because I am examining the witness, and he has stated what the ratio was. I do not see any necessity for amplifying it. I regard it as a proper ratio if the ratio is allowed at all. I also object to the witness answering questions after he has been coached by the counsel. I do not think it is fair.

Q. You may go on.

A. This ratio is found by taking the insurance in force at the end of each month in the several classes; and this insurance for the twelve months foots up to these respective figures.

Mr. MITCHELL: That is what I wanted. There is nothing coaching about that.

WITNESS: Such amounts — were prorated are as follows: Furniture & fixtures, total during the year $322.55; of that amount——

Mr. BYERS: Mr. Putnam, I think it would be just as well if you would state the totals of the prorating, it would be just as satisfactory.

WITNESS: All right. The amount to be prorated is $43,836.80.

Q. If you will give the total items.
A. Furniture & fixtures, $322 55; salaries of officers $17,661.62; aries of employees, $12,048.90; taxes $1,003.64; legal expenses 655.04; rent home office $1,594; collection & exchange 1476.51; stage 1,879; other expenses 1.195.54; and all those items aggregate 836.80 Now, of this amount, 13,633.22 was charged to the O. F. and 30,203.58 was charged to the premium fund; and the 2 premium fund was charged directly with the first year's commissions 63,868.03, and renewel commissions 202.57, and edical examiners' fees $68.00.
Q. Now will you state these items of expense and their distribution for the year 1899, the year ending December 31, 1899?
A. Yes. These items are $63,789.10.
Q. What were your total expenses?
A. The total expenses for the year 1899 were $101,734.42.
Q. Excuse me, the item of 63,789.10 is to be prorated?
A. Yes, the item of 63,789.10 is to be prorated between the holders mortuary assessment certificate of the guaranteed option policy.
Q. Just in the same manner as the other?
A. Yes. To be divided, *pro rata* between the holders of the mortuy assessment certificate & guaranteed option policy upon the basis the insurance in force at the end of each month; and that basis as 99,884,000 is to 13,443,000. There was charged therefore to the erating fund 56,222.35 and to the premium fund there was charged 566.75.
Q. This total of 63,789.10 was made up of what items?
A. All the other operating expenses of the company's outside of mmissions & medical fees.
Q. You may state what each of these items was.
A. It covered salaries.
Q. You can state them just as you have in the other cases.
A. We have not got them.
Q. Here is the insurance commissioner's report, you can use that you want to, as a statement from your books.
A. There would be collection & exchange 2,683.49; there 73 would be salaries of officers $14,369.96; salaries of home office employees $6752.16; taxes & insurance department es $1248.23; rents——
Q. Rents of what?
A. Rents for all purposes.
Q. All right.
A. $2,487.15; legal expenses $10.205.24; advertising and printng $3.481.11; stamps $3,754.77; incidentals $5,407.61; agents' xpenses $3,475.58; there is also salaries of managers and agents 10,023.80 which the expense account in the journal shows.
Q. You may state what the salaries of the officers were in the year 899.
A. The president's was $3,000, the secretary's was $3,250, and the rustees $75.00 a month, and ten additional if present at roll call.

Q. They sometimes — for $85.00 a month and sometimes $75.00?
A. Yes.
Q. What was the salary of these same officers for the year 1900?
A. Mr. Taylor's salary was at the rate of $3,000 a year, until he resigned to take effect August 31.
Q. That is, 1900?
A. Yes.
Q. And after that?
A. Then Mr. Palmer became president with a salary of $5,000 a year. The secretary's salary remained $3,250.
Q. And the trustees?
A. Sept. 1, 1900, the trustees' compensation was $50.00.
Q. It was seventy-five before that, up to that time?
A. Up to Sept. 1st; then it became fifty.
Q. It was the same as before, except from seventy-five it was reduced to fifty?
A. After Sept. 1st; it was reduced to fifty. It was fifty per month with ten for being present at roll call. I would say that the medical director's salary each year was $3,000.
Q. That was true in 1900 and 1901?
A. Yes.
274 Q. And for 1901?
A. All the officers were $3,000; excuse me the president was February 1, 1901——
Q. Then his salary up to February 1st, 1901 was the same as the year before?
A. Yes. It was then, February 1, 1901, the president's salary was made $7500 per annum, and the other salaries remained the same.
Q. Can you state from your books in the year 1901 what this item of 1195.54, or what you called the other expenses, what that item was made up of?
A. The first, for employees' fidelity bonds $210; furniture repairs $55.43; telephone $159.50; miscellaneous expenses $770.61.
Q. Can you state what these miscellaneous expenses of $770.61 were?
A. It was postage and telegrams and items of a miscellaneous nature.
Q. Were these items paid out by check or by cash?
A. Almost invariably by check, occasionally by cash.
Q. And the postage was just simply the ordinary postage account of the company?
A. Yes.
Q. Letters to agents?
A. And to members.
Q. Rentals, outside the home office $1594, where were those offices?
—. St. Louis, Chicago, Pittsburg, Minneapolis, Cleveland.
Q. What year is that?
A. 1901.

Mr. PALMER: Mr. Putnam made a statement, and I might as well orrect it; that all the rents were pro rated.

Mr. BYERS: He stated as to what offices that covered.

Mr. PALMER: No, he did not state it correctly. The office rents that were pro rated in 1900 and 1901 you said were the
75 office rents other than the home office; did you mean that?

WITNESS: No. I did not mean that. The home office rent as pro rated; but all the outside offices were charged to the premium und. The home office rent is $1594, and the outside offices $632.10.

Mr. BYERS: Then I think both myself and the examiner have ot it wrong, but that is as you stated it. The home office rent is 1594?

A. Yes. The home office rent is $1594.

Q. You had a large rental of outside offices, somewhere about 700?

A. $632.10; those are the outside offices.

Q. I don't care anything about that; it was charged to the other und. These legal expenses that were pro rated $6,655.04; will you tate how that was made up, from what items?

A. What year?

Q. 1901.

A. Amounts paid attorneys for looking after the buisness of the ompany; for attending to the buisness of the company, as committed to them.

Q. What attorneys, have you the items there?

A. No.

Q. Have you no statement of their services, and what services vere rendered?

A. Yes; we have.

Q. Have you that statement here?

A. No.

Q. Will you produce it?

A. We can give you an itemized list of these items.

Q. Then I would like to have it if you have it.

A. Yes.

Mr. BYERS: The amounts of the taxes, you can make it for the three years, because it will be just as easy to put them all together.

276 Q. Salaries of employees of the home office $12,048.90, that was made up of the salaries of how many employees, and what were their duties? I suppose they were clerks in the office.

A. Bookkeepers, cashiers, clerks mailing notices to members writing policies, stenographers, and the usual work in a large office.

Q. That would be the same for all three years?

A. Yes, for all three years.

Q. For the year 1900, the item of taxes $3161.31, how was that, on what property was that?

A. They were taxes paid the insurance department taxes on premium receipts, and other fees that are payable to the various departments.

Q. Then that includes not only what are properly denominated taxes—but fees to the insurance department of the State?

A. Almost the whole of it.

Q. Now I will ask you to explain this item of 63,789.10.

A. Those figures previously given off were taken off the statement referring to another year. The amount composing thus 63,789.10 is made up of various items.

Q. What year is that?

A. 1899.

Q. Please give the items.

A. Taking the balance to be prorated between the mortuary assessment certificates and the guaranteed option policies; agents' salaries 10.023.80; officers' salaries 14,369.96; employees' salaries 6,752.16; collection 2,683.49; advertising 3,381.11; taxes 1,248.23;
rent 2,487.15; stamps 3,754.77; legal expenses 10,205.24; in-
277 cidentals 5,407.61; net advances to agents 3,475.58; making a total of 63,789.10.

Q. And that amount was pro rated?

A. Yes, that amount was pro-rated.

Q. Now in regard to these items for this year 1899; the item of stamps 3754.77, what was that, these stamps?

A. Postage stamps and revenue stamps.

Q. What proportion of that was revenue stamps.

A. That can be ascertained exactly. I would say approximately $400.

Q. $400 revenue?

A. Yes.

Q. And the rest postage?

A. Yes. The rest postage; but that is an approximate only.

Q. Agents' salaries 10,023.80, what agents were those?

A. Superintendent of agents 6,000; and the balance of it is almost wholly, I think his expenses and that of his agents, that of the company's agents.

Q. Legal expense account 10,205.24, that was made up of what items?

A. Fees paid lawyers.

Q. That is not itemizing it exactly; that is a general statement; you have got these items?

A. Yes.

Q. What were those items?

A. Different items of that account.

Mr. MITCHELL: We object to this question, and to furnishing the items of that account on the ground that the items are very numerous and cover a long period of time, and are distributed a num-
ber of the books of the company, in different places; and also
278 that the request to furnish these items at this time is unreasonable and the information asked for is wholly immaterial and

irrelevant to any issue in this case. For these reasons we decline to furnish information requested.

Mr. BYERS: Does the witness refuse to answer the question.

WITNESS: On account of the reasons given, it is impossible at this time to answer this question.

Mr. PALMER: As counsel for defendants we decline to produce the testimony asked for, on the ground that the complainant is not entitled to the items asked for, under the issues in this case.

Mr. MITCHELL: We would like it also to appear that all of the testimony and books, and data — have been asked for to be used in this exar ination have been produced voluntarily by the company.

Mr. BYERS: There is no evidence of that fact.

Mr. MITCHELL: Mr. Putnam has testified to everything that he was asked to testify to, without the use of a *subpœna duces tecum* or an order for inspection.

Mr. PALMER: Every paper and all figures or documents for which a written request was made have been produced; and many for which no written request was made.

Mr. BYERS: I wish to make it a matter of record that the statement of counsel in regard to the production of documents is unfair for the reason that no *subpœna duces tecum* was served be-,
279 cause of an understanding between Mr. Mitchell the solicitor and myself, that such books would be produced in order to avoid the trouble incident to having the books of the company tied up in the hands of the clerk, as would have been under a *subpœna duces tecum.*

Mr. MITCHELL: The only understanding had between counsel and myself in this case was what is in writing.

Mr. BYERS: I object to this proceeding, for the reason that this is an examination of Mr. Putnam as a witness; and I wish to proceed with the examination.

Mr. MITCHELL: I would like to state upon the record,——

Mr. BYERS: I object to any statement of the counsel as immaterial, incompetent and irrelevant, and as having no bearing upon any issue in this case.

Mr. MITCHELL: The only understanding that was had with Mr. Byers in this matter was, that he should write us and state what information he desired to be produced at this examination, and give us a reasonable opportunity to produce it; and that this information would be furnished, as far as it was relevant or proper. Mr. Byers wrote two letters to us to the solicitors for defendants, itemizing a list of information he desired from the books of the company, which two letters are herewith produced and are offered in evidence, and marked Defendant's Exhibits *1* and 2.

Mr. BYERS: They are objected to, as immaterial, incompetent and irrelevant.

280 Mr. MITCHELL: I desire to say further that all the statements asked for in the letters have been produced and fur-

nished and no request has been made by Mr. Byers to furnish the items of any particular expense account until the present time.

Mr. PUTNAM: I also desire to make a statement.

Mr. BYERS: I object to any statement on the part of Mr. Putnam that is not called for by any question on the part of counsel for complainants, as immaterial and irrelevant, and as not proper upon this examination.

Mr. PUTNAM: For about two weeks a large part of the office force has been engaged in getting out the information called for by these two letters, and that information has been furnished complete; in addition to that, a great deal of additional information has been given at the request of plaintiff's attorney during the course of examination.

Mr. MITCHELL: I will ask Mr. Putnam if the furnishing of this information has disarranged the business of the office.

Mr. BYERS: I object to the question, as immaterial and irrelevant.

Mr. PUTNAM: Very greatly.

Mr. BYERS: I object to this statement also, because it is not proper re-examination.

Mr. MITCHELL: We are simply stating our reasons for not furnishing this information.

Mr. BYERS: Mr. Putnam, you have refused to answer the question, and do refuse to answer the question with reference to
281 the items of your expense account for these years, other than you have already given them?

Mr. MITCHELL: He says he is unable to answer them.

WITNESS: Yes.

Q. Did you procure the forms of lien notes and lien policies asked for this morning?

A. Yes; they are here.

Q. Where is the lien note?

A. Those are the lien notes. (Witness produces a certain paper.)

Q. Are not all these applications for insurance for exchange of policies, substantially in the same form.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, as not the best evidence and as calling for the conclusion of the witness.

A. There are minor changes.

Q. There are minor differences?

A. There are minor differences.

Q. In the application?

A. In the application.

Q. Mr. BYERS: I will offer in evidence the form produced as a form of application for exchange of policy?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence, and for the further reason that it appears that this is not the only form of application for

the exchange or transfer of policies that was used by the defendant company.

Said paper is marked Complainant's Exhibit "C."

282 Mr. BYERS: I said, as a form.

Q. Were the applications for exchange of policies made upon this form that has been marked Complainant's Exhibit "C."

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, because no foundation has been laid for the question and as not the best evidence.

A. Lien policies were issued upon that application; and also upon other applications.

Q. Lien policies were issued upon this application Exhibit "C"?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, because no foundation has been laid for the question and as not the best evidence.

A. Yes.

Q. Policy you say was issued upon this application; policies were issued upon this application. Is this the form of policy that was issued under that application? (Showing a paper to witness.)

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

Mr. PALMER: The examiner will not know which policy you mean so as to put it on the record, by this means.

Q. But this is the form of policy?

A. Yes.

Q. And policies issued on this application?

A. Yes, issued on this application (C.).

Q. Is this substantially the form of policy that was issued upon that application; or is it the form of policy that was issued upon that application.

283 Objected to by counsel for defendants as immaterial, incompetent and irrelevant, as not the best evidence and because no foundation has been laid for the question.

A. This form of policy was issued on this application.

Mr. BYERS: I now offer in evidence the form of policy identified by the witness.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

Said form of policy is now marked Complainant's Exhibit "D."

Q. When a policy was issued in form Exhibit "D" to a member of the company, it was issued upon his signature of the form Exhibit "C" stating the facts in relation to his former policy, and in regard to his debt, was it not?

Objected to by counsel for defendants as immaterial, incompetent

and irrelevant, as not the best evidence and because no foundation has been laid for the question.

A. Yes, in a few cases. Yes, is the answer.

Q. And clause six of this application for the exchange of policies Exhibit "C," when the proper blanks therein are filled in constitutes, does it not, a lien note held by the company upon the policy issued in pursuance of this application?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, as not the best evidence and because no foundation has been laid for the question.

A. Yes.

284 Q. There is no other document in the possession of the company constituting or called a lien note, except the signature affixed to this application Exhibit "C," when signed by the policy holder?

Objected to by counsel for defendants as unintelligible.

Q. There is no other document in the possession of the company called or constituting a lien note upon the policy marked Exhibit D" when issued, than the document marked Exhibit "C" when signed by the policy holder?

Counsel for defendants make the same objection as to the last question.

A. No.

Q. When this form of application Exhibit "C" was signed by parties desiring policies, was any money paid to the company or received by the company in consideration of the lien as described in clause six of Exhibit "C"?

Counsel for defendants make the same objection as to the last question.

Mr. BYERS: I mean, when said policy was issued.

Mr. PALMER: There is no money paid to the company as consideration for the lien.

WITNESS: No money was paid to the company as consideration for the lien.

Q. Did the company pay any money to the policy holder at that time, as a consideration for this lien?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

285 Q. Did the company pay any money to the policy holder at that time, as a consideration for this lien?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. No.

Q. Had the company ever received any money from the policy

holder to whom the policy was issued, except mortuary assessments on his original policy, and the items specified in this Exhibit "C" as cash paid to the guaranty trust fund?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

Mr. PALMER: Do you mean prior to the issuance of the policy

Mr. BYERS: Yes: prior to the issuance of the policy.

A. It received premiums.

Q. But prior to the issuance of this policy?

A. It received also membership fees and annual dues

Q. Any other money?

A. No, not that I recall.

Q. Then, Mr. Putnam, upon the issuance of this policy Exhibit "D" and the reception of this Exhibit "C" signed by the policy holder, no actual money was paid or received on either side; either by the company or by the policy holder?

Objected to as immaterial, incompetent and irrelevant by counsel for defendants, and as leading.

A. The premiums——

Q. Wait a moment; except the premiums paid by the
286 policy holder, in consideration of the issuance of the policy.

Counsel for defendants makes the same objection as to the last question.

A. No.

Q. Was that a fact in relation to all the liens or lien notes held by and received by the company in consideration of guaranteed option policies?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. Yes.

Q. Mr. BYERS: I might add there, barring liens.

Q. The simple fact is all I want and I don't want it unless Mr. Putnam fully understands the question. But I am going to have the fact.

Mr. PALMER: Are you willing that I should suggest to him one thing that he has overlooked in answering the question.

Mr. BYERS: Yes.

Mr. PALMER: That is the question, whether or not at the time of the issuance of the policy, or shortly afterwards, some of these policy holders have not paid part of the lien in cash, or sometimes the entire lien.

A. Sometimes, I don't remember the date, payments were made reducing the lien, and sometimes paid in full.

Q. We will concede that is a fact. But was it not only a very small amount of the lien notes that have been mentioned; was that not true with reference to only a very small amount of the lien notes held by the Co.?

A. It would be a small proportion.

287 Q. A small proportion?

A. Yes.

Q. It is true that no money has been received by either side on any of the lien notes held by the company at the time when your various statements of the assets and liabilities of the company were made, as has been testified to previously.

Mr. PALMER: Before you answer that question, think carefully. I don't want to be prompting you.

Mr. BYERS: It comes pretty close to it.

A. No; some of these liens were paid off.

Q. Very good. When you made your statement on July 31, 1901 that you had $597,564.24 in interest bearing liens on policies, isn't it true that for all these liens mentioned in that statement no money had been had or paid by either side?

A. No actual money had been paid by either side as a consideration for these liens mentioned in that statement? No, that is not true.

Q. That is not true?

A. No.

Q. How much money has been paid or received in consideration of those lien notes, actual money?

A. I can only approximate it.

Q. I should think you could state it exactly. There are some of these reports that show, I think. You say you can only approximate it.

A. Yes.

Q. There was only a very small proportion, if any of these lien notes that represented money, actual money?

A. It would be a small proportion.

Q. A small proportion?

A. Yes.

288 Q. When these lien policies were issued to the holders of mortuary assessment certificates, who had become so a short time before, 1898, were any of such holders allowed to receive back their notes that they had given to *to* guaranty trust fund, or pledged to the guaranty trust fund, in consideration of their taking new policies?

Objected to by counsel for defendants, as immaterial, incompetent and irrelevant.

A. In a few cases they were returned, policies having been returned to the company; the mortuary assessment certificate having been surrendered up.

Q. The guaranty notes were returned?

A. In a few cases.
Q. You don't know how many?
A. No.
Q. Were on the mortuary assessment certificates that the members held, the mortuary assessments increased at any time during the year 1899? I don't believe I will trouble you to look that up. Have the mortuary assessments been increased since 1898?
A. Yes.
Q. What has been the increase of these mortuary assessments on each mortuary assessment certificate?
A. Forty per cent.
Q. Forty per cent.?
A. Yes, as regards assessments.
Q. In other words, prior to 1898 you had assessed such mortuary assessment certificates for 30 deaths per annum?
A. For several years.
Q. And since that time, since December 31, 1898, you have increased the assessments, so that each member is now
289 assessed for 42 deaths per annum, instead of 30? That is, each member holding a mortuary assessment certificate?
A. I don't recollect now when the increase began.
Q. It is the only assessment. I don't know when it began either.
A. But the last mortuary call did contain 14 single assessments. The practice of the company has been to make three mortuary calls each year.
Q. That answers the question properly, I think. Calling your attention to this matter: In 1900 there was an investigation of the affairs of the Bankers Life Association by a committee appointed at one of the regular meetings of the association, was there not?

Objected to by counsel for defendants, as immaterial, incompetent and irrelevant, and because no foundation has been laid for the question.

Mr. BYERS: I just want to know if there was an investigation, as a matter of fact.

Objected to by counsel for defendants, as immaterial, incompetent and irrelevant, and for the reason that no foundation has been laid for the question.

A. Yes.
Q. And your books of minutes show the resolution appointing this committee, does they not?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and because no proper foundation has been laid for the question.

A. Yes.

290 Mr. BYERS: I will offer in evidence from the minute book of the association page 224, which reads as follows:

"U-on motion of John H. Nickell, seconded by Jacob Stone, it was

recommended that a committee of five be appointed to investigate the affairs and policies of the company; the integrity of the trustees and officers; and the general management of the company; and thereupon to publish their report and mail a copy to each member, the purpose being to advance the welfare of the company and all its members:

Thereupon the members nominated and elected one by one this committee:

Judge L. W. Collins, chairman, St. Cloud, Minn.
Jacob Stone, of Minneapolis.
John Caulfield, of St. Paul.
A. F. Foster, of Litchfield.
J. H. Long, of Mankato."

Q. Such a committee was appointed?
A. Yes.
Q. Did that committee make a report, do you know?
A. Yes; it made a report.
Q. Was that report sent out by the committee, or by the association?

Objected to by counsel for defendants, as immaterial, incompetent and irrelevant.

A. Sent out by direction of the committee.
Q. Sent out by direction of the committee?
A. Yes.
Q. Sent out by the officers of the association, -as it nit?

291 A. Objected to by counsel for defendants, as immaterial, incompetent and irrelevant.

A. At the direction of the committee.
Q. Do you know whether the committee employed any actuaries to make an examination of the books and affairs of the company?

Objected to by counsel for defendants, as immaterial, incompetent and irrelevant.

A. I don't remember now.
Q. You don't recollect it?
A. No.
Q. Do you recollect of such an examination being made?

Objected to by counsel for defendants, as immaterial, incompetent and irrelevant.

Mr. PALMER: What kind of an examination?
Mr. BYERS: By actuaries or accountants.
Mr. PALMER: You mean, under this committee?

A. An examination was made by accountants.
Q. By accountants?
A. Yes.
Q. Under this committee?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Under this committee.

Q. Do you know whether the accountants made a report to this committee?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Only by hearsay.

Q. You never saw any report that they had made to the committee then?

A. I don't think I ever saw a complete report.

292 Q. A complete report?

A. A complete report.

Q. So if you don't know about this report of the committee, it is needless to ask you. But I will ask you this: Were you not advised, Mr. Putnam, as secretary of the company, by this committee, that the contingent fund of the company belonged to the mortuary assessment members?

Objected to by counsel for defendants, as immaterial incompetent and irrelevant, and as being hearsay evidence.

Mr. PALMER: You say by the committee?

Mr. BEYERS: Yes; by this committee appointed under the resolution on page 224 of the minutes.

A. I don't recollect it. I called their attention then to a part of this that I thought ought to be changed.

Mr. PALMER: I move to strike out the last part of the answer of the witness, as not being responsive to the question.

Mr. BEYERS: I have no objection to it being stricken out.

Cross-examination by Mr. MITCHELL:

Q. You stated on your direct examination that loans had been made by the defendant company to three of its trustees, Mr. Auerbach, Mr. Merriam, and Mr. Bigelow.

A. Yes.

Q. Was there ever more than one loan made to either of these trustees?

A. Only one.

Q. Was any loan ever made to any other trustee or officer?

A. None other loans.

Q. Do you know the dates on which these loans were made?

A. Yes.

293 Q. When?

A. The loan to Mr. Bigelow was made in 1893; the loan to Mr. Merriam was made in 1894, and the loan to Mr. Auerbach was made in 1895.

Q. Were these loans made on collateral security?

Objected to by counsel for complainants, as immaterial.

A. The very best.

Mr. BYERS: I object to this as immaterial, because two of the loans have been repaid.

Q. Have any loans been made to any officer of trustee by the company of any of its funds in the last seven years, or since 1895?
A. No.

The further taking of testimony is now adjourned until such time as counsel for complainants may notify the special examiner of his desire to proceed with further examination of witnesses.

On the 28th day of March, A. D. 1902, the parties met pursuant to agreement, and the special examiner being present, the further taking of testimony is proceeded with as follows, the parties being represented by their respective counsel.

294 TIMOTHY R. PALMER a witness sworn on the part of the complainants testifies as follows:

Examination in chief by Mr. BYERS:

Q. What is your full name?
A. Timothy R. Palmer.
Q. You reside in St. Paul?
A. Yes, sir.
Q. You were president of the Banker's Life Association?
A. Yes, sir.
Q. From what time?
A. September 1, 1900.
Q. And you are the president of the Minnesota Mutual Life Insurance Company?
A. Yes, sir.
Q. As such president you have general management of the affairs of the company?
A. Yes, sir, subject to the approval or disapproval of the board of trustees; or I should say subject to any direction that the board of trustees may see fit to give me
Q. You were also the legal adviser of the company prior to your election as president?
A. Yes, sir.
Q. For how long prior?
A. My recollection is I was elected attorney in the fall of 1896.
Q. You have made yourself thoroughly acquainted with the business of the Banker's Life Association as far as you are able?
A. I think I have.
Q. You are well acquainted with the funds and property of the association?
A. Yes, sir, I think so.

Q. You knew, or know of the state of the funds of the company at the times when your books were closed?

95 A. Yes, sir, I know them by reference to them; I don't pretend to carry all the figures around in my head.

Q. You heard the testimony of Mr. Putnam, as given in relation the various funds of the company, as they were on December 31 the years 1900 and 1901?

A. I was present at the time his testimony was given. I didn't atch all the figures he gave, or pay very particular attention to iem.

Q. You say you didn't pay very particular attention to them?

A. No, sir, not all the figures, not in detail.

Q. You heard his statement of the funds at that time?

A. I think I did. I was talking with other persons at the time. don't know whether I heard all of his testimony. I was present hen his testimony was given.

Q. Can you state whether Mr. Putnam correctly and truly stated ie condition and the state of those funds at that time?

A. I think, so far as he was interrogated, and so far as I heard is testimony, he did. However, there are a great many things iat should be cleared up.

Counsel for complainants moves to strike out the last paragraph f the answer of the witness, as not responsive to the question.

Q. You heard Mr. Putnam's testimony relative to the charges, the arious charges and credits to the different funds of the association, id you not?

A. Yes, sir.

96 Q. Did he correctly state the method of the final charging and crediting of the different amounts to the different funds?

A. All the amounts I heard him testify to. I don't know that I aid particular attention to everything that he said. I am unable o state in a wholesale way, or answer to a general question of that ind as to whether everything Mr. Putnam said was in all respects ccurate or not. If you want me to testify generally along these ines, if you will call me for that purpose I will testify if you will ive me a little opportunity to prepare for it.

Q. You are well acquainted, are you not, with the method of andling the funds of the association?

A. Yes, sir.

Q. I will ask you, say during the year 1900 from what sources the perating fund was made up?

A. With the possible exception of small items, I should say, from ecollection, without having the books or a transcript of them be- ore me that it was made up from interest and annual dues.

Q. Annual dues refer to mortuary assessment certificates, do they?

A. Yes, sir; and possibly some membership fees, together with uch amount as was credited to that fund, and charged against the remium fund.

Q. In 1901 the operating fund was made up in the same way, was it?

A. I think so, yes sir.

Q. And the mortuary fund was made up how?

A. The mortuary fund?

Q. Or rather, from what sources was the mortuary fund derived?

A. The mortuary fund was, to the best of my recollection, I am only testifying to the best of my recollection, and subject to any correction that may be necessary if my testimony does not
297 agree with the books.

Counsel for complainants moves to strike out the answer of the witness as not responsive to the question.

WITNESS: I said I could only answer in a general way.

Q. Very well, if you are going to answer in a general way, I think it would save time.

A. The mortuary fund, to the best of my recollection during that time was made up of assessments levied pursuant to the mortuary assessment certificates and the articles and by-laws under which they were levied, against the mortuary assessment members; and possibly some transfers from the guaranty trust fund, and possibly some charges against the operating or contingent fund.

Q. Those would be small items, the charges against the operating and contingent funds?

A. That would depend upon what you call small items.

Q. Compared with the total of the fund?

A. Compared with the total of the fund? *A.* Yes, sir.

Q. And this contingent fund, do you know what the object of opening that fund was?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as calling for the conclusion of the witness.

A. I think the only means I have of knowing what the object of opening that fund originally was, appears from the records in the books, the minute books. I know as it was finally—the open-
298 ing of the account *account* was finally confirmed by the trustees and acted upon and used and maintained. It was for the purposes of meeting any contingency, or for any use which might be necessary, proper or expedient for the efficiency of the company and its success, and the promotion of the welfare of the members.

Q. Do you know during the years 1900 and 1901 from what sources the receipts of the contingent fund were derived?

A. In the main, I think from the operating fund.

Q. Do you know when the premium fund was opened?

A. I can't say the exact date; but to the best of my recollection it was late in the winter of 1898 or early in the spring of 1899.

Q. Do you know from what sources this premium fund was made up?

A. I think I do.

Q. Will you state?

A. The premium fund, do you mean when it was made up or when it was opened.

Q. No, has been since its opening. I will say has been made up, instead of was.

A. From assessments or premiums.

Q. Why do you say assessments?

A. Paid by the holders of guaranteed option policies, by that portion of the unpaid past premiums on lien policies, represented by lien notes, by credits which were allowed to members exchanging mortuary assessments certificates for guaranteed option policies from time to time, as installments of advanced assessments, or premiums if you please, were paid by the holders of guaranteed option policies; and as far as I can recall at this time, that constitutes the premium fund.

Q. This premium fund then contains all the lien notes held
299 by the company, does it?

A. At the present time, yes sir. That is, they stand credited to the premium fund.

Q. These lien notes, are these notes as described by Mr. Putnam in his testimony Monday?

A. Yes, and the same as described in the insurance department report made in October 1901.

Counsel for defendants moves to strike out all of the last answer of the witness after the word "Yes" as not responsive to the question.

Mr. PALMER: I want to state in addition that——

Q. Is this in answer to that question?

A. Yes, sir; that there were several different forms of lien notes, only one of which as I recollect it, was offered in evidence during Mr. Putnam's examination; but the general character of the notes was the same.

Mr. BYERS: That is sufficient, Mr. Palmer; that is a clear answer.

Q. You spoke, Mr. Palmer, of credits allowed members exchanging their mortuary assessment certificates for guaranteed option policies?

A. Yes, sir.

Q. Do you know approximately the amount of credits allowed members holding guaranteed option policies, in making this exchange from mortuary assessment certificates?

A. I couldn't say that now.

Q. Such credits were allowed though?

A. Yes, sir, they were allowed as I stated.

300 Q. And from what funds were those credits taken, or to what fund were they charged?

A. They were charged to the contingent fund, and credited to the premium fund. Every dollar of it still remains in the hands of the company.

Counsel for complainants moves to strike out the last paragraph of the answer of the witness, as not responsive to the question.

Q. Have you not paid out some of those amounts to parties holding guaranteed option policies who have died?

A. No amount that was charged against the contingent fund. We have paid death losses under guaranteed option policies.

Q. Have you paid it out of the premium fund, without reference to where the money came from that was in that fund?

A. We have paid it out of the premium fund in general. I can say to you that our funds are all held together. We don't divide them up and separate them in envelopes and packages.

Q. I didn't suppose you would. Since you have been president of the company, have you attempted or caused agents of the company to attempt to secure any new members under the mortuary assessment plan?

A. No, sir. We have never refused to accept one.

Counsel for complainants moves to strike out the last answer of the witness, with the exception of the words "No, sir" as not responsive to the question.

Q. Have you not instructed your officers and agents to induce the mutual assessment members to surrender their certificate as such members and take guaranteed option policies and other
301 forms of policies? You can answer that by yes or no.

A. Under my direction, and that of the trustees, the members holding mortuary assessment certificates have been solicited or requested to exchange them for guaranteed option policies.

Q. Have they been solicited to exchange them for other policies than guaranteed option policies, whole life policies under the new plan?

A. A whole life policy is a guaranteed option policy; but if you want to know whether they have been solicited to take whole life policies, I say "Yes" that is, they have been solicited to exchange, with the privilege of taking the new form of policy that the company issues. There is nothing to conceal about it.

Mr. BYERS: That is a fair answer.

WITNESS: I would say that every holder of mortuary assessment certificates from the beginning of this transfer has been offered the same privilege that any other member has been offered. There has been absolutely no discrimination between them or favoritism.

Counsel for defendants moves to strike out the last answer of the witness to the effect that there has been no discrimination as not called for by any question, and not responsive to any question, but as a volunteer statement made by the witness.

Q. Have you not stated at various times and places, that if any one member had a right to complain of another with reference to this exchange that you have mentioned, that a member holding a

guaranteed option policy had a right to complain of the mortuary assessment member because the latter was paying a much
302 greater assessment than the former.

A. I think any statement of that kind I made would be in a letter. If you will produce the letter I will tell you.

Q. You don't recollect having made that statement in a conversation?

A. I don't recollect having made that statement, I have no recollection of it. Will you repeat the question.

Q. Have you not stated at various times and places, that if any one member had a right to complain of another with reference to this exchange that you have mentioned, that a member holding a guaranteed option policy had a right to complain of the mortuary assessment member because the latter was paying a much larger assessment than the former.

Mr. BYERS: I will substitute the word premium for assessment.

A. I say absolutely and emphatically, no.

Q. You never made such a statement?

A. No, not at any time nor to any person.

Q. Have you not stated that a member holding a guaranteed option policy had the right to complain that the mortuary assessment member had not exchanged his certificate rather than that a mortuary assessment me-ber to complain of the holder of a guaranteed option policy for having changed his certificate.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as hearsay evidence.

A. No, I have never made such a statement as that, because I have always said that the mortuary assessment members had a
303 right to change or not, as they saw fit, and no one could complain. You have got the cart before the horse in this thing.

Mr. BYERS: Maybe I have, or else you misunderstood my question. (The question was perhaps wrong) I will ask the question over again. Have you not stated at various times and places that if one member had the right to complain of another member, that a member holding a guaranteed option policy had the right to complain of a mortuary assessment member, because the former was paying a much greater sum for his insurance than the latter.

Objected to by counsel for defenda*b*ts as immaterial, incompetent and irrelevant and as hearsay evidence.

A. I can't say that I have made any statement of that kind at various times and places. I have written a good many letters on the subject that I recollect, at one time or another, making a statement somewhat like that.

Q. Substantially that, with that substantial meaning.

A. I can give you my recollection of what I said. It was in connection with other matters, if you want it.

Mr. BYERS: I don't know as I care about it now.

Q. Do you hold a certificate in this company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. I hold three certificates, mortuary assessment certificates.
Q. Have you not exchanged these for guaranteed option policies.
A. No, but I will. I will just as soon as we can get the kind of policy I want; it is being prepared.

304 Q. Do you know how many new policies, and to what amount, how many new policies and what amount, exclusive of exchange of mutual assessment certificates for guaranteed option policies, the company procured during the year 1901?

A. No, I cannot say.
Q. You know very nearly do you not?
A. It was not a very large amount. I think Mr. Putnam has the figures here on that.
Q. He didn't state them. I suppose you can state them?
A. Mr. Putnam is here at the present time and he has them. I should say it was less than $100,000. You mean entirely new business written.
Q. Yes. I wanted to exclude the guaranteed option policies from the business.
A. You mean guaranteed option policies which were given in exchange for mortuary assessment certificates.
Q. Yes.
A. I am not prepared to state the exact amount. My recollection is it was less than $100,000.
Q. Was it half of a $100,000?
A. I wouldn't say, Mr. Byers, I can't recollect. We commenced writing new business in the latter part of November after the re-organization as a legal reserve company. I am not sure how much business was written actually in December. It lapped over to January so much that I could not say.

Cross examination by Mr. MITCHELL:

305 Q. Mr. Palmer, there has been some questions asked you with regard to the use of the premium fund, and the transfers from the contingent fund to the premium fund, on account of credits allowed transferring members. Can you state approximately the amount now in the premium fund of the company?

A. You mean now, or on the 31st of December, 1901.
Q. That is, the date of the last statement that the company made.
A. The last annual statement made at the close of business, December 3, 31, 1901, and at that time the amount in the premium fund, as I recollect it, was something over twelve hundred thousand dollars. I won't say that, because I have not given these figures any consideration at all. I didn't suppose I would be called upon

o testify as to these matters when I was called on to testify this
norning. I am not prepared upon these matters.
Q. Can you state from your recollection whether or not the amount
n the premium fund from time to time since its creation, has been
lways in excess of the total amount transferred to that fund from
he contingent fund.

Objected to by counsel for defendants as immaterial, incompetent
nd irrelevant and not proper cross examination; and for the rea-
on that the subject of the size of this premium fund has not been
ouched upon in the examination of either of the witnesses?

A. I believe it has, ever since the premium fund started. I know
has since I have been president.

Re-direct examination by Mr. BYERS:

Q. How much of that premium fund was made up of lien
06 notes on the date you have mentioned.

Witness consults a paper.
Mr. BYERS: That is a little irregular.
WITNESS: I cannot recollect the exact amount without referring
o the books.
Mr. BYERS: Well, go ahead.

A. I cannot state the exact amount at this time, but it was be-
veen six hundred and six hundred and fifty thousand dollars.

DOUGLAS PUTNAM recalled as a witness for complainants testifies
s follows:

Examined by Mr. BYERS:

Q. Have you in your testimony on March 23d and 25th truly and
orrectly stated the amounts in the different funds of the company
he Banker's Life Association, at the various dates that you have
entioned? You have have you not?

Objected to by counsel for defendants as immaterial, incompetent
nd irrelevant and for the reason that the witness is under oath as
he record will show at the time he answered the question and gave
is testimony, and the law presumes that he told the truth?

A. To the best of my knowledge and belief.
Q. And you have truly and correctly stated the amounts at the
arious times charged or debited to these various funds, at the time-
mes stated by you.

07 Counsel for defendants makes the same objection to this as
to the last question.

A. To the best of my knowledge and belief.
Q. Have you correctly and truly stated the sources of the amounts

of revenues and expenses of the company, as far as you have stated the same?

Counsel for defendants makes the same objection to this as to the last question but one.

A. To the best of my knowledge and belief again.

Q. By whose direction did you prorate the expense of management, between the mortuary assessment certificates and the guaranteed option policies as you have testified?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Under the advice of the actuary David Parks Fackler of New York city.

Q. Excuse me, but who gave you your directions, who gave you directio*tion*s to do it?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. The officers and trustees.

Q. How many new policies exclusive of exchanges from mortuary assessment certificates to guaranteed option policies did the company issue in 1901?

A. I don't know, the books will show.

Q. You know approximately do you not?

A. Not very well, not very approximately, I should say something over one hundred thousand dollars.

308 Q. How many policies? I didn't ask you the amount.

A. Average of policies, three thousand dollars.

Q. So you issued about thirty policies, more or less?

A. More or less. The books will show the answer to your question.

Cross-examination by Mr. MITCHELL:

Q. It does not appear from the records what memoranda or books or statements you used in giving your testimony with regard to the funds of the company on your previous examination; will you state what those were?

Objected to by counsel for complainants, as immaterial, incompetent and irrelevant, and not proper cross-examination.

A. They were memoranda from statements prepared by the clerks in the office, after the receipt of letters from Mr. Byers to our solicitors, requesting information. They may, of course, contain clerical errors, but I have every reason to believe that the statements are correct.

Q. You know of your own knowledge that they are correct, barring any clerical errors, do you not?

A. Barring any clerical errors, yes they are correct to the best of my knowledge and belief.

Mr. BYERS: I have endeavored to secure the attendance of one other witness, and I may want to call one or two more, and I will notify you tomorrow. The examination may be adjourned until Friday, and I will give you notice if I do not wish to call any more witnesses.

309 Mr. MITCHELL: We object to the adjournment. If Mr. Byers has any further witness to produce, the practice requires that the — should be fixed for the hearing and notice given.

The further hearing of testimony is now adjourned subject to notice to be given to the examiner by counsel for complainants.

Counsel for complainants notifies the examiner on the 27th day of March that he proposed to introduce further testimony, and asks that the hearing be had on the following day March 28th, 1902; the examiner thereupon gave notice to defendants that the further taking of testimony would be held in his office on the 28th day of March, 1902 at ten o'clock a. m.; and at said time and place parties appeared by their respective solicitors and the following proceedings were had in the presence of the special examiner.

JOHN B. SANBORN, a witness produced and sworn on the part of the complainants testifies as follows:

Examination in chief by Mr. BYERS.

Mr. MITCHELL: We make the same objection to the swearing of this witness and to the taking of any testimony, as was made to the examination of Mr. Putnam.

Q. What is your name?
A. John B. Sanborn.
Q. You are a resident of St. Paul?
A. I am.
Q. You are one of the trustees of the Minnesota Mutual Life Insurance Company?
A. I am.
Q. And you were a trustee of the Banker's Life Association?
A. I was.
310 Q. For how many years?
A. For 21 yrs. and part of another.
Q. That is, practically ever since its organization?
A. Ever since its organization. I was one of the charter members.
Q. You have attended the meetings of the trustees quite regularly?
A. I have.
Q. You are a member of the company?
A. I am.
Q. And were a member of the Banker's Life Association?
A. Yes; of the Banker's Life Association, and I am still.

Q. You hold a membership certificate?
A. In both organizations.
Q. In both organizations?
A. Yes.
Q. You hold what is called a mortuary assessment certificate?
A. Two, yes.
Q. Two of them?
A. Yes.
Q. Amounting to how many?
A. $2,000 each.
Q. You hold also what is known as a guaranteed option policy?
A. Well, yes; I don't know for certain that that is the name. Mine is an absolute policy.
Q. When was it issued?
A. It was issued within two years.
Q. Not one year?
A. That is for $2000; it is at the rate that costs me about $250 a year.
Q. It was taken in exchange for one of the mortuary assessment certificates?
A. Yes, I gave up one of those and took this one.
Q. Do you recollect when the Banker's Life Association ceased to solicit new membership on the mortuary assessment plan?
311 A. I couldn't be very definite; but it must have been two years ago or longer.
Q. Two years ago?
A. Two years ago or more.
Q. Do you recollect whether it was in the spring of 1899 or the late winter, or when it was?
A. It was between 1898 and 1900.
Q. Somewhere about that?
A. Somewhere about that. Well, that is definite enough.
Q. Can you state why the company ceased to solicit membership on the mortuary assessment plan?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as calling for the conclusion of the witness.

A. Because the solicitation was fruitless, and seemed to be leading to hostility and antagonism against the company. I mean by that that this solicitation literature, you may call it that, would be returned to the trustees. I have had it returned to me from business men, stating that it was obnoxious, and that they didn't want any more of that style. Those were the reasons mainly for ceasing to send it out. It was without any fruit except that of hostility, and it became sort of obnoxious to the business world apparently.
Q. Did you then regard the plan on which the company was originally organized as having become a failure, to a certain extent?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as calling for the conclusion of the witness.

312 A. Well, I can speak only for myself. I regarded it as a system that had strong support in the early days of the organization; and during some years as a system that obtained business as easy as in any kind of an insurance company; but it was assailed all the time by what is called old line companies, and they had at length produced a sentiment throughout the country, that made it, as I considered, in a practical way impossible to longer increase the business in that line; and the question of how long we could maintain losses without new business was a question that we submitted to experts all the time.

Q. Then when did you arrive at the conclusion as one of the trustees of the company that it would be wise to change your plan from the mortuary assessment plan of insurance to the plan which in this trial has been called guaranteed option policies plan?

A. I cannot fix the precise date myself, but I recollect distinctly the meeting at which I made up my mind we would have to do it, to attempt to make a transfer. I made the motion that we make the effort, make a trial. It was after having a full conference with Mr. Fackler and with other insurance men; and considering all the questions involved, I made up my mind fully; and I believe I made the motion that we attempt the transfer.

Q. You say you recollect that. I asked you the date.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as calling for the conclusion of the witness.

313 A. Well, that date was probably in 1899, I should say; it might be earlier, it might be later. I could get the date at the company's offices.

Mr. PALMER: It is admitted in the pleadings. There is no question about when it was. It was December 1898.

Q. Coming to the meeting at which it was resolved, as appears from the minutes of the association, to re-incorporate the company as a legal reserve company, which meeting appears to have been held August 5, 1901; do you recollect that meeting?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant and as not the best evidence.

A. No. I was absent.

Q. You were not in the city?

A. I was not present. I was not in the city at that time.

Q. Had you been prior to that time?

A. I left in 1901, I recollect on June 16th, and was away until August 28, 1901. It was my first absence since the organization of the company, I believe.

Q. Had there been any discussion among the trustees of the action that should be taken at this proposed meeting before you left?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.

Q. Was the plan of re-incorporation discussed among the trustees, prior to your going away?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

314 A. Yes.

Q. Was there any discussion among the trustees of a notice that should be sent to the members of that association of that meeting?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

Q. The precise form of notice?

A. I don't know. It was understood that we were to submit this question, by all of the trustees, before I left, and that at the meeting it should all be laid before the members at the annual meeting and be passed upon by them.

Q. But was any form of notice discussed, any discussion as to that?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. I don't know that the precise form of notice was discussed. We left that to the officers and attorneys that the notice should be given and should be given so as to be in legal form, and be binding upon all the parties attending, as well as upon the officers and trustees.

Q. Was it your understanding that this notice should specify the fact that a motion would be made to amend the articles of incorporation so as to make this Banker's Life Association a legal reserve Co.?

Objected to by counsel for defendants *and* immaterial, incompetent and irrelevant and because the understanding of the witness is not admissible.

A. Yes; *at* that is my recollection.

Q. That is what you intended should be done?

315 Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes.

Q. In regard to attendance of the directors at the meetings of the board you were a regular attendant, as was also Mr. Bigelow, were you?

A. Yes, when I was in the city I never failed to attend, that I know of. I don't recollect that I was ever absent from a meeting of the board while I was in the city; except these ten weeks last summer.

Cross examination by Mr. PALMER:

Q. What is your age?
A. My age is 75 last birthday.
Q. How long have you been living in the city of St. Paul?
A. I have lived in St. Paul since December 21st, 1854.
Q. What has been your occupation during that time?
A. Practicing law.
Q. A member of what firm?
A. Well, I have been a member of three or four firms. Sanborn & French, first, until 1857. From 1857 to Feb., 1860, Sanborn, French & Lund. From Feb., 1860, to Dec. 31, 1862, Sanborn & Lund. Then a break, for the public service from 1862 to 1870, as far as practice in this city is concerned. Then John B. and W. H. Sanborn from 1870 until 1880, and then John B. Sanborn and Walter H. Sanborn, Edward P. Sanborn from 1880 to 1892, I believe, when Walter Sanborn was appointed judge of the circuit court of the United States. Then since that time the firm has been John B. and E. P. Sanborn to this day.

Q. When you spoke of the public service you meant the
316 war of the rebellion?

A. Yes; war of the rebellion, and things growing out of it; Indian commissions and things of that sort.
Q. You are also a director in the German American bank?
A. Yes, I have been.
Q. You have been since organization of the bank the old German American national bank?
A. Yes, I was a member, I was vice-president of the German American national bank; no, I believe I was never the vice-president of the German American national bank, but I was a director, and a member of the board of directors of that bank until the suspension in 1892. I have not been a member of the board of trustees or an officer of it since. I have also been a stockholder for a small amount, and I am still.
Q. You have never paid any attention to the details of the business of the company, have you?
A. Nothing more than to——

Mr. BYERS: I object to this, as not proper cross-examination. I have not gone into any details of that kind; also it is immaterial and incompetent.

WITNESS: Nothing more than to look over the monthly returns of the company.

Q. The reports you mean.
A. The monthly reports of the officers, of the secretary and treasurer, and to take such action and to look into the matters to such an extent as to satisfy myself that the officers were working in good faith, and were honest, and were doing what they believed to be best for the company, and acting in good faith.

317 Q. As a matter of fact, the question of changing from the mortuary assessment plan to stipulated premium plan was under consideration for two years, or more, was it not?

A. Yes sir.

Q. During which time the board of trustees consulted two or three different actuaries.

Objected to by counsel for complainants, as incompetent irrelevant and immaterial, and as not proper cross examination.

A. We retained one, after we had decided to give this matter careful consideration. Especially Mr. Fackler.

Q. Mr. David Parks Fackler of New York city?

A. Yes, sir, Mr. David Parks Fackler of New York city; we called him in several times, frequently at the meetings of the board; when we thought we would decide the question and take action; he was always present. The other actuaries; we asked the opinions of other actuaries, one in particular, I don't remember distinctly who he was but—

Q. I don't recollect his name, but the Missouri actuary.

A. Yes, I recollect him.

Q. You consulted him also?

A. Yes, sir, we consulted him also.

Q. Did the board of trustees also consult their general counsel and other counsel?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant and as leading.

Mr. PALMER: This is cross examination.

A. Yes all the time consulted him. I don't know who we had for general counsel at that time; but we consulted counsel.

318 Perhaps counsel varied. We had various experiences with counsel; and they have all been good counsel, and always served us well. We had differ- counsel at different times.

Q. You had at one time the counsel and advice of Mr. Horace R. Bigelow?

A. Yes, sir.

Q. And at another time the advice of Mr. Fauntelroy and Mr. Bunn.

A. Yes, sir, Mr. Fauntelroy was one; he was with us a long time.

Q. As well as your own firm?

A. Yes, sir, our own firm rendered some service, not very much.

Q. With reference to this annual meeting held in August the trustees took no action with reference to that notice?

A. No more than that the notice was given.

Q. The notice was given?

A. Yes, sir. We threw responsibility upon counsel. I know we did. We said we would trust the form of notice to counsel for the insurance company for that purpose.

Q. The president and counsel?

A. The president and counsel.

Q. As far as the form was concerned, there was nothing discussed about it, was there at all? No more than it was to be in the form of the notice required by law?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant, and not proper cross-examination.

A. Well, it was understood what the business would be, that the trustees considered it important to submit it to the membership; and the notice should be so given so as to make it lawful, and submit it so as to decide that question. I don't know that I ever read the notice to this day.

319 TIMOTHY R. PALMER recalled for further examination by counsel for complainant.

Examined by Mr. BYERS:

Q. Mr. Palmer, did any death losses occur in 1899, 1900, and 1901, in the mortuary assessment certificates?

A. Yes.

Q. Were any assessment- for such death losses levied on any holder of guaranteed option policies to pay any part of those death losses.

A. There was no direct assessment upon them.

Q. Was any part of the death losses occurring in the mortuary assessment certificates paid out of the premium fund?

A. No.

Mr. Byers, subject to the motion of complainant- for a reopening of the testimony, for the purpose of correcting any mistakes due to accident or surprise or inadvertence on the part of counsel for complainants, and subject to a motion for the reopening for the purpose of taking the testimony of Mr. Charles H. Bigelow, who is now absent from the State, the complainants rest their case, and close the taking of testimony in chief.

320 PLAINTIFFS' EXHIBIT "A."

Officers:

Timothy R. Palmer, president.
John B. Sanborn, vice president.
Douglas Putnam, secretary.
Charles H. Bigelow, treasurer.
Charles L. Greene, medical examiner.
Clarence E. Secor, eastern field manager.
John A. O'Shaughnessy, western field manager.

Trustees:

C. H. Bigelow.
M. Auerbach.
J. B. Sanborn.
C. Livingston.
J. F. R. Foss.
E. B. Trubey.

The Bankers Life Association of Minnesota.

Notice.

The annual meeting of the members of the Bankers Life Association of Minnesota will be held at the home office of the company, in the St. Paul Fire and Marine building, in the city of St. Paul, State of Minnesota, on the fifth (5th) day of August, 1901, at ten o'clock in the forenoon, for the transaction of such business as may properly come before it.

The by-laws provide that members may vote in person or by proxy duly appointed in writing; but proxies must be registered with the secretary at least five days before the meeting.

No individual not a member can be appointed as the proxy of any member.

Dated St. Paul, July 5th, 1901.

DOUGLAS PUTNAM, *Secretary.*

Form 31.

321 PLAINTIFF'S EXHIBIT "B."

Secretary's Report for Year Ending July 31, 1901, as Presented at Annual Meeting, Aug. 5, 1901.

Cash assets July 31, 1900		$878,069.04
Receipts.		
Premiums	$278,900.46	
Mortuary assessments	107,214.06	
Annual dues	32,497.14	
Guaranty trust fund notes paid	722.00	
Liens paid	639.24	
Interest	36,604.10	
Increase in market value of securities	24,727.83	
Agents and sundry persons	10,914.27	
Sundries	97.27	
		492,316.37
		$1,370,385.41
Disbursements.		
Assessment death losses	$139,000.00	
Stipulated premium death losses	101,826.79	
Com's to and sundry expenses of ag'ts	92,759.20	
Salaries to officers	15,723 26	
Salaries of employés	11,099.62	
Advertising and printing	3,038.56	
322 Taxes	2,531.02	
Rent	2,343.35	
Collection and exchange	1,668 90	
Guaranty deposits returned to beneficiaries of deceased members	1,064 00	
Medical fees	73.00	
Accrued interest paid at time of purchase of bonds, etc.	2,272.02	
Other expenses	16,956.66	
		390,356.38
Cash assets		$980,029.03
Deduct credit bal's of ag'ts and persons		368 95
Net cash assets		$979,660.08
Interest bearing liens on policies		597,564.24
Balance of ledger funds July 31, 1901		$1,577,224.32
Net increase in cash assets during year ending July 31, 1899	$17,223.25	
Net increase in cash assets during year ending July 31, 1900	55,750.13	
Net increase in cash assets during year ending July 31, 1901	101,959.99	

323 *Assets.*

U. S. registered bonds			$598,556.25
	Municipal bonds, etc.:		
$9,000	Aberdeen, S. D., 4½ % bonds	$9,168.75	
3,500	Detroit, Minn., 6 % bonds	3,812.20	
2,000	Madison, S. D., 6 % bonds	2,302.50	
11,850	Mayville, N. D., 5 % bonds	12,620.25	
6,000	Preston, Minn., 6 % bonds	6,429.70	
10,000	Seattle, Wash., 5 % bonds	10,407.00	
10,000	So. Omaha, Neb., 6 % bonds	10,692.00	
5,000	St. James, Minn., 6 % bonds	5,928.00	
5,000	Sioux Falls, S. D., 5 % bonds	5,000.00	
7,500	Thief River Falls, Minn., 4½ % bonds	7,912.50	
10,000	Walla Walla, Wash., 5 % bonds	10,453.40	
25,000	Windom, Minn., 5 % bonds	26,352.50	
8,000	Towner Co., N. D., 5 % bonds	9,019.20	
10,000	Yankton County, S. D., 4 % bonds	10,000.00	
25,000	Iowa Central Ry. 5 % bonds	29,125.00	
20,000	Minneapolis & St. Louis R. R. first mtg. gold 4 % bonds	19,775.54	
50,000	Montana Central Ry. first mortgage gold 6% bonds	66,650.00	
10,000	Northern Pacific gold 4 % bonds	10,100.00	
10,000	Toledo, St. Louis & Western R. R. prior lien gold 3½ % bonds	9,000.00	
15,000	St. Paul Gas Light 6 % bonds	17,437.50	
324			
10,000	Western Union Telegraph funding and mortgage 4½ % bonds	10,600.00	
8,500	Merchants National Bank stock	8,500.00	
			301,286.04
First mortgages on real estate			42,700.00
Cash in Merchants national bank		$24,270.49	
" " National German American bank		11,895.41	
" " First national bank		135.50	
			36,301.40
" " office			9.40
Policy loans			1,175.94
Cash assets			$980,029.03
Liens			597,564.24
Total assets			$1,577,593.27
Due agents, etc.			368.95
Balance of ledger funds			$1,577,224.32
	Contained in following funds:		
Premium fund		$920,550.19	
Guaranty trust fund		601,477.36	
Operating fund		30,809.62	
Contingent fund		18,695.69	
Mortuary fund		5,691.46	
Total funds			$1,577,224.32

DOUGLAS PUTNAM, *Secretary.*

325 COMPLAINANT'S EXHIBIT "C."

No. —.

Application for Exchange of Policies in the Bankers Life Association of Minnesota.

I hereby make application to the Bankers Life Association of Minnesota for exchange of my life insurance certificate or polic-, in accordance with the provisions of its articles of incorporation, by-laws and resolutions of its board of trustee- and, as a part of my application, make the following statements:

1. My name in full is —— ——.
2. The date of my birth is ——.
3. In my original certificate, my age, counting to nearest birthday, was rated as — years.
4. My post office address is —— in the city of —— State of —— to which notices and communications may be sent.
5. I now hold certificate — of membership issued upon my life by the Bankers Life Association of Minnesota as follows:

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Number of certificate.	Date of certificate.	Amount of certificate.	Cash paid to guaranty trust fund.	In force.		
				Yrs.	Mo.	Days.
.....	....	$.....	$.....	.....	.....	.....

6. I hereby surrender said certificate — and exchange — for a policy on the guaranteed option form now issued by your company under which I may obtain insurance during my whole life for $— and I hereby request that the new policy for which I have applied shall take effect as of* —— 18—, so that it can be issued to me at my rated age in said certificate, viz., — years, with the corresponding premium of $— according to the table of rates now in use, payable now and hereafter every — months from the anniversary of said date, and I agree that in consideration of such rate and the taking effect of the policy as of the said date, said policy hereby applied for shall be issued subject to a lien equal to the reserve, to-wit: — dollars ($—) and that said net lien, to wit: — dollars ($—) shall bear interest at the rate of five per cent. per annum, which interest, if not paid in cash at the end of the year, shall be added to said lien and bear interest at the same rate and on the same terms. Said lien, principal and interest shall continue until the maturity of said policy, and shall be

paid out of the amount insured thereby unless otherwise paid prior thereto; provided, however, that if the amount of said lien,
327 with the accumulated interest, shall ever exceed the reserve for this policy, computed in the manner and on the basis aforesaid, any excess shall be paid by me in cash, on demand.

As a condition to my procuring said exchange and receiving said policy hereby applied for, I, the undersigned applicant, do hereby warrant to be true all statements contained in my original application — for said certificate —, and in any application for reinstatement, and make the same a part hereof, and agree that the same shall apply to and become a part of said guaranteed option policy, and I agree to be bound by the articles of incorporation and by-laws of said association and that the same shall at all times constitute a part of the policy hereby applied for.

Witness my hand and seal this — day of ——, 190–.

—— ——. [SEAL.]

In presence of—

—— ——, *Agent.*

*N. B.—The month and day of this date must be the same as that of this application for exchange, and the year stated must be the year in which said date fell within six months of the birthday on which the insured actually attained his rated age. It can be left blank to be filled in at the home office.

(Application for policy form No. 18.)

(In pen and ink.) Form # 18 First policy issued # 30056—Sept. 19—1900—

328 *Proxy.*

I hereby constitute and appoint the trustees of the Bankers Life Association of Minnesota, or a majority thereof, my lawful proxy, with full power and authority, when I am not present in person or by other proxy, to represent me and to cast any and all votes or ballots which I shall be entitled to cast at any or all of the general or special meetings of the members of said association.

Affix twenty-five cent revenue stamp here.

Witness my hand and seal this — day of ——, 190–.

—— ——. [SEAL.]

In presence of—

—— ——, *Agent.*

329 COMPLAINANTS' EXHIBIT "D."

The Bankers' Life Association of St. Paul, Minnesota.

No. —. Age, —.

This policy is issued in lieu of membership certificate No. — and dates back to —— 18—.

Guaranteed Option Policy.

The Bankers' Life Association of Minnesota in consideration of the sum of — dollars, to be paid on the delivery of this policy, or before it shall take effect, and of the further payment of an equal sum, in advance, on the — day of —— in each and every year during the continuance of this contract,

Hereby insures the life of ——— (herein designated the insured), of —— in the State of —— and

330 Hereby promises, upon surrender of this policy, to pay two thousand dollars, to —— —— if living at the time of the death of said insured, otherwise to the executors or administrators of the insured, at the home office of the association, in the city of Saint Paul, Minnesota, within thirty days after receipt and approval of the proofs of the death of said insured, during the continuance of this policy;

Subject, however, to, and conditioned upon, the following stipulations, agreements and conditions, viz: That all the special advantages, privileges and provisions stated on the following pages, and everything stated or contained in the application of this policy, are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In witness whereof, the president and secretary of said The Bankers Life Association of Minnesota have hereunto set their hands, and caused the seal of the said association to be hereunto affixed at the aforesaid city of Saint Paul, this -- day of —— 190–.

[SEAL.] —— ——, *President.*
—— ——, *Secretary.*

This policy being issued in lieu of a policy of same amount now in force, revenue stamps are not required hereon.

Policy form No. 18.

(In ink:) First policy issued # 30056—Sept. 19, 1900.

331 *Special Advantages, Privileges, and Provisions.*

Privilege of travel and residence.

First. The insured, under this policy, is privileged to travel or reside in any part of the world.

Incontestability.

Second. If this policy continue in force for three years from the date of surrender of the original membership certificate—it will be incontestable after the death of the insured; provided, premiums are paid and the provisions as to age and military and naval service are observed.

Occupation.

Third. The insured under this policy, may engage in any occupation, but, if in the army or navy, must obtain a permit, as hereinafter provided.

Beneficiary may be changed.

Fourth. The beneficiary or beneficiaries under this policy may be changed by the insured at any time during its continuance—provided the policy is not already assigned—by filing with the company the written request of the insured duly acknowledged, accompanied by this policy for indorsement; such change, however, to take effect only on the indorsement of the same on the policy by the company.

The insured may, however, resign the right to change *be* beneficiaries—either temporarily or permanently—by filing with the company a written waiver, duly acknowledged, and accompanied by this policy.

332 Grace in payment of premiums.

Fifth. After this policy has been in force three months from the date of surrender of the original membership certificate a grace of one month will be allowed in payment of premiums, subject to an interest charge at the rate of six per cent. per annum for the number of days during which the premium remains unpaid. During the month of grace this policy shall remain in force and the unpaid premium, with interest as above, shall remain an indebtedness to the company which will be deducted from the amount payable under this policy if the death of the insured shall occur during the month.

Privilege of reinstatement.

Sixth. After forfeiture for nonpayment of any premium, this policy may be reinstated at any time by the insured's making written application, accompanied by evidence of good health satisfactory to the company, and paying overdue premiums with interest at the rate of six per cent. per annum.

Seventh. It is specially agreed that in construing the provisions of this contract regarding reserves, and in relation to all other matters, except as herein otherwise expressly provided, it shall be considered as dating and as having been in force from —— 18—, and that the premium hereon shall be that proper for a person of

the rated age of the insured on said date, and in consideration of the above, it is further specially agreed that this policy is and shall be subject to a lien and indebtedness of — dollars ($—) and that said lien shall bear interest at the same rate, and on the same
333 terms; provided, however, that if said lien with the accumulated interest shall ever exceed the reserve for this policy computed as below provided and according to the actuaries' or combined experience table of mortality on the basis of four per cent. compound interest, any excess shall be paid in cash by the insured on demand. It is also agreed that any surplus allotted to this policy shall be applied to the reduction of said lien or the interest thereon.

Table of Loans, Paid-up Policies, or of Extended Insurance, Reckoning from the Date of the Surrender of the Original Membership Certificate.

At end of—	1. Loans.	2. Paid-up policies.	3. Extended insurance.
3rd year	$	$	— years — months.
4th year	$	$	— years — months.
5th year	$	$	— years — months.
6th year	$	$	— years — months.
7th year	$	$	— years — months.
8th year	$	$	— years — months.
9th year	$	$	— years — months.
10th year	$	$	— years — months.
11th year	$	$	— years — months.
334 12th year	$	$	— years — months.
13th year	$	$	— years — months.
14th year	$	$	— years — months.
15th year	$	$	— years — months.
16th year	$	$	— years — months.
17th year	$	$	— years — months.
18th year	$	$	— years — months.
19th year	$	$	— years — months.
20th year	$	$	— years — months.

On application to the company at the end of the 20th year this table will be extended for 10 years more.

The foregoing table of loans, paid-up policies and extended insurance is subject to the following conditions set forth in the eighth, ninth and tenth clauses relating to loans surrender values, reserves, etc.

Loans.

Eighth. After this policy shall have been in force three years from the date of surrender of the original membership certificate the company will, during the then current month of grace, or upon the fifth, tenth, fifteenth or twentieth anniversary of such surrender, loan hereon, under the terms of the company's loan agreement then

in use, a sum or sums the total of which, with any other indebtedness, shall not exceed the loan value of the policy as specified in the above table, upon condition that at the time of making such
335 loan the policy shall be duly assigned to the company as the sole security for such loan; that the premium for the next year be paid, and that interest at the rate of six per cent. per annum on said loan shall be payable annually in advance. At other periods, if approved by the board of trustees, the company will loan, on similar terms, the amounts shown in the above table.

Surrender values.

Ninth. After this insurance shall have been in force three full years from the date of surrender of the original membership certificate, it will not be forfeited by non-payment of a subsequent premium, but will continue as hereinafter provided.

First. The company will, without any action by the insured, continue the insurance for the amount shown in column (2) of the above table, less the reversionary value of any indebtedness on this policy, computed according to the combined experience table of mortality, with compound interest at the rate of five per cent. per annum, and upon surrender of this policy will issue its paid-up policy payable at the death of the insured, in accordance herewith; or

Second. If this policy is surrendered before the month of grace expires, the company will issue a policy extending the full insurance under this policy during the term provided in column (3) of the above table, provided there are no loans or indebtednesss outstanding; and provided also that in case death occurs within three years thereafter, all premiums that would have become due hereon shall be deducted from the amount otherwise payable by
336 the company.

Third. The insurance provided for in the two preceding clauses shall be based on completed insurance years only, and shall be subject to the conditions of this policy (but without further payment of premiums and without loans or participation in surplus) and to the provision that the accumulated funds of the company, as required by statute, shall at no time be less than the sum of one periodical or stipulated payment by all the members, and not less than $100,000.

Reserve, etc

Tenth. The company agrees to hold for this policy and each similar policy, the full net reserve computed as below provided according to the combined experience table of mortality on the basis of four per cent. compound interest, provided, however, that if the funds derived from such policies shall be reduced below the amount of said reserve, the company may require the insured under this and each similar policy to pay his just proportion of the deficiency, within sixty days after written request therefor; or, at the option

of the company, such proportion with compound interest thereon at the rate of four per cent. per annum may be charged as a lien against the policy and any sum which shall become payable thereunder. In computing the reserve to be held thereon, it is agreed that this contract shall be considered to have been a one year term policy during the first year after the date stated above in the seventh provision, and at the expiration of said year shall be considered to have become a whole life policy on which reserve began to accrue from the beginning of the second year after said date
337 in the seventh provision.

Eleventh. Notice of each and every payment due on this policy is given and accepted by the delivery of this policy, and any further notice required by any statute or otherwise is expressly waived.

Twelfth. All premiums are due and payable at the home office unless otherwise agreed in writing, but may be paid to agents in exchange for receipts signed by the president, vice-president or secretary, and countersigned by such agents. This policy shall not take effect until the first premium is paid during the life and good health of the insured. If any premium, or any note given for premium or any other indebtedness is not paid on or before the day when due, this policy shall become void, and all payments previously made shall remain the property of the company, except as hereinbefore provided.

Thirteenth. If it is found that the age of the insured was understated in the application on which this policy was issued, the amount payable under this policy shall be such proportion of the amount of the policy as the premium paid bears to the required premium at the true age. Any indebtedness to the company for any balance of the premium for the current policy-year, not yet due, and all other indebtedness, shall at all times be a lien upon the policy, and upon any sum which shall become payable thereunder, and will be deducted in any settlement of said policy or any benefit thereunder.

Fourteenth. Any assignment of this policy must be made in duplicate and both sent to the home office, one duplicate to
338 be retained by the company and the other to be returned and the company will not assume responsibility for the validity of any assignment.

Fifteenth. The insured shall not engage in military or naval service unless a written permit shall have been previously obtained and provision made for payment of additional charges therefor, in accordance with then existing rules, regulations and requirements of this company. In case of death during or after military or naval service without such permit, only the full net reserve for the policy will be payable.

Sixteenth. This policy does not insure against the death of the insured caused by his own hand or act, while sane or insane, during the first three years after the date of the surrender of the original membership certificate.

Seventeenth. No agent has power on behalf of the company to

make or modify this or any contract of insurance, to extend the time for paying any premium, to waive any forfeiture, or to bind the company by making any promise or making or receiving any representation or information. These powers can be exercised only by the president, vice-president or secretary of the company and cannot be delegated. The articles of incorporation and by-laws of this company are hereby made a part of this policy. No suit or action against this company for recovery on account of the death of the insured shall be sustained or commenced in any court of law or equity, unless commenced within one year from the date of the death of the insured.

339 No. —.

Copy of Application for Exchange of Policies in the Bankers Life Association of Minnesota.

I hereby make application to the Bankers Life Association of Minnesota for exchange of my life insurance certificate or policy, in accordance with the provisions of its articles of incorporation, by-laws and resolutions of its board of trustees and, as a part of my application, make the following statements:

1. My name in full is —— ——.
2. The date of my birth is ——.
3. In my original certificate, my age, counting to nearest birthday, was rated as — years.
4. My post office address is —— in the city of —— State of ——. To which notices and communications may be sent.
5. I now hold certificate — of membership issued upon my life by the Bankers Life Association of Minnesota, as follows:

Number of certificate.	Date of certificate.	Amount of certificate.	Cash paid to guaranty trust fund.	In force.		
				Yrs.	Mo.	Days.
.....	.....	.....	.....	.....	.....	.....

340 6. I hereby surrender said certificate — and exchange — for a policy on the guaranteed option form now issued by your company under which I may obtain insurance during my whole life for $— and I hereby request that the new policy for which I have applied shall take effect as of * —— 18—, so that it can be issued to me at my rated age in said certificate viz., — years, with the corresponding premium of $— according to the table of rates now in use, payable now and hereafter every — months from the anniversary of said date, and I agree that in consideration of such reduced rate and the taking effect of the policy as of the said date said policy hereby

applied for shall be issued subject to a lien equal to the reserve to-wit: — dollars ($—) that would have accumulated on such policy at this time had it in fact been issued at the said date, and which will be required to be held for my new policy at this time (computed in accordance with its terms and according to the actuaries' or combined experience table of mortality, on the basis of four per cent. compound interest), less the amount to be credited me by the association on account of my past payments, to-wit: — dollars ($—), and that said net lien, to-wit: — dollars ($—), shall bear interest at the rate of five per cent. per annum, which interest, if not paid in cash at the end of each year, shall be added to said lien and bear interest at the same rate and on the same terms. Said lien principal and interest shall continue until the maturity of said
341 policy, and shall be paid out of the amount insured thereby unless otherwise paid prior thereto; provided, however, that if the amount of said lien, with the accumulated interest, shall ever exceed the reserve for this policy, computed in the manner and on the basis aforesaid, any excess shall be paid by me in cash on demand.

As a condition to my procuring said exchange and receiving said policy hereby applied for, I, the undersigned applicant, do hereby, warrant to be true all statements contained in my original application — for said certificate — and in any application for reinstatement and make the same a part hereof, and agree that the same shall apply to and become a part of said guaranteed option policy, and I agree to be bound by the articles of incorporation and by laws of said association and that the same shall at all times constitute a part of the policy hereby applied for.

Witness my hand and seal this — day of —— 190–.

—— ——. [SEAL.]

In presence of—

—— ——, *Agent.*

*N. B.—The month and day of this date must be the same as that of this application for exchange, and the year stated must be the year in which said date fell within six months of the birthday on which the insured actually attained his rated age. It can be left blank to be filled in at the home office.

342 Received of the Bankers Life Association of Minnesota — dollars, in full settlement and release of all claims under this policy No. — on the life of —— ——.

—— ——, *Beneficiary.* [SEAL.]

Witness:

—— ——.

The Bankers Life Association of Minnesota, St. Paul, Minn. No. —. Amount $—. Insurance on the life of —— ——.

343 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, *et al.*
} C. Equity. 783. Notice for Taking Depositions.

SIRS: You will please take notice that the depositions and testimony of C. A. Loveland and Samuel Wright, who live and reside in the city of Milwaukee, in the State of Wisconsin, and more than one hundred miles from the place of trial of the above entitled action, whose testimony is wanted on behalf of said complainants in said action, will be taken on behalf of said complainants by and before William Millard a notary public in and for the county of Milwaukee and State of Wisconsin at 151 Sixth street, in the city of Milwaukee and State of Wisconsin aforesaid, on Thursday the 13th day of March 1902, at eleven o'clock in the forenoon.

And the taking of such depositions and testimony will be adjourned from day to day until completed.

Dated at Chicago, Illinois this 3rd. day of March A. D. 1902.

Yours truly,
DILLON & GOETZ,
Solicitors for Complainants.
344 JOHN F. BYERS, *Of Counsel.*

To Messrs. How, Taylor and Mitchell, solicitors for defendants and Mr. T. E. Palmer, their counsel.

Service of above notice by copy admitted this 6th day of March 1902.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

345 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL., Plaintiffs,
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, *et al.*, Defendants.
} Deposition.

At the time and place specified in the annexed notice W. S. Dillon appeared for and in behalf of the plaintiffs, and W. D. Mitchell for and in behalf of the defendants; and SAMUEL WRIGHT, one of the complainants in the above entitled suit being duly sworn by me, testified in his own behalf as follows:

Direct examination by W. S. DILLON:

Question. Your name?
Answer. Samuel Wright.

Q. Where do you reside, Mr. Wright?
A. In Milwaukee, Milwaukee county, Wisconsin.
Q. When did you become a certificate holder of the Bankers Life Association of St. Paul, Minnesota?
A. On the 10th day of December, 1892.
Q. How many certificates did you have?
A. Two.
346 Q. You may state what these are.
A. These are the certificates issued by the Bankers Life Association of St. Paul, Minnesota.
Q. Issued to whom?
A. To my estate.

We offer these as "Exhibits H. and I." Samuel Wright.
Q. What amount did you pay to the Bankers Life Association, if any?
A. At the time I received these?
Q. Yes, sir.
A. I don't recollect now just the amount at that particular time.
Q. Did you pay anything into what is known as the guaranty trust fund?
A. I gave two notes of forty-one dollars apiece. One payable in one year and the other payable in two years. This is my best recollection. I made two payments, one at a time. When they became due I paid them.
Q. What were these notes paid for as you understand?
A. They were, as I understand it, as a guaranty fund for the purpose of protecting me in my insurance, for the purpose of providing a reserve.

I object to the witness testifying as to an understanding of the use of the guaranty trust fund.

A. For the purpose of making primium due a certain amount
347 to be regularly so much—sixteen dollars and forty cents, three times a year and twelve dollars and thirty cents once. The object of the guaranty fund was for the purpose of fixing that as a permanent payment that I had to pay for my insurance That was the representation made by the agent when I insured.
Q. Do you remember his name?

A. His name was Mr. Shepherd.
I move that the representation by the agent be stricken out as unimportant, irrelevant and immaterial, no foundation laid and not responsive to the question.

Q. These representations that you speak of were made at the time that your membership was solicited?

Objected to as unimportant, irrelevant, immaterial and no foundation laid.

A. They were. If they had not been made I would not have taken the insurance. My acceptance of the certificates was based upon these representations.

Q. Were there any representations made to you by the agent of the company concerning the use of this guaranty trust fund of which you speak, in case that a member should lapse, or fail to meet the assessment levied upon him?

Same objection

A. I was informed that the object of that guaranty fund was for the purpose of protecting me in case members should allow their certificates to lapse.

Q. State wh-t were the regular assessments you paid whilw you were a member.

348 A. My regular assessments were sixteen dollars and forty cents, three times a year and twelve dollars and thirty cents once. These were my regular assessments as I recollect during the entire time that I paid.

Q. There were no variations at all?

A. No variations at all.

Q. Have you any written communication from the company which states what this guaranty trust fund was to be used for any special purpose?

A. I have a printed statement—two of them.

Q. Where did you get these?

A. I received then from the company by mail.

Q. About when?

A. Soon after these dates, within a month probably. One bears date of March 10th, 1897 and the other June 22nd, 1897. That is as near as I can recollect.

We offer these "Exhibits as J. and K."

Objected to as unimportant, irrelevant, immaterial and no foundation laid.

A. I received in addition——

Q. When were you first warned by agents of the company, or when did you first have any intimation of —. Did you ever receive any letters concerning these same representations?

A. I did.

Q. From whom?

A. Bankers Life Association of St. Paul, Minnesota.

349 We offer these as "Exhibit- L and M."

Objected to as unimportant, irrelevant, immaterial and no foundation laid.

Q. When did you get any intimation, or ever receive warning from the company that y-ur assessments were to be raised?

Objected to as unimportant, irrelevant, immaterial and no foundation laid and leading.

A. About October 1899 a gentleman called on me and presented his card claiming to be E. W. Leonard, State agent for the Bankers Life Association of St. Paul Minnesota. He stated, or asked, or rather he called my attention to the fact that I was a member of the Bankers Life Association.

Q. State what this gentleman said to you in regard to, if anything in regard to the increase of the assessment.

Objected to as unimportant, irrelevant, immaterial and no foundation laid.

Q. Also state what he presented to you if anything.

Same objection.

A. He stated that the present system upon which the company is operated is bound to lead to bankruptcy, or words to that effect, and that it was necessary to make an entire change as they were selling insurance too low. I do not recollect exactly what his words were, but that was the style of it. That they had made the discovery before any loss had occurred to any of the members by reason of raise in assessments or premiums. That they had
350 decided to adopt a new form of insurance.

Q. Did he present you with anything?

Same objection.

A. He stated the form and at the same time presented me with a statement of my standing with the company informing me that if I accepted their new proposition that I would be entitled to one hundred thirty-six dollars and ninety-four cents of the guaranty fund, but if I did not I would be frozen out by reason of the fact that they were taking in no new members. They were changing the desirable risks to the new system and there would be no one left in this old class except such as could not obtain insurance elsewhere. That at my next assessment—he predicted the assessment might be two or three times as large as it was; that my guaranty, the amount that I had placed in the guaranty fund—eighty-two dollars—I would lose and all other amounts, providing I did not pay all regular premiums. That the only course left for me was to adopt the new system or proposition which is contained in this sheet or else cancel. I demanded the balance coming—one hundred thirty-six dollars and ninety-four cents—informing him I would buy my insurance where I saw fit after an investigation. He left this statement with me and requested me to think the matter over.

I move that answer be stricken out as not responsive.

Q. What you have just stated Mr. Wright, is a conversation that had taken place between you and the agent?

351 A. The agent claimed to be Mr. Leonard, general manager.

Same objection.

We offer this in evidence as "Exhibit N. N."

Objected to as unimportant, irrelevant, immaterial *nad* no foundation laid.

Q. Was anything else said by Mr. Leonard in regard to the probable increase of assessments on your policy?

Objected to as unimportant, irrelevant immaterial and no foundation laid.

A. It was repeated several times. We were in conversation probably an hour and a half. In that time he repeated it a half dozen times anyway.

Q. What were the words he used in regard to exchange or changing of desirable risks to the new plan?

Objected to as unimportant, irrelevant, immaterial and no foundation laid.

A. He claimed that the desirable risks were being changed and nothing would be left except the undesirable which in itself would increase the premium assessment to such an extent that it would finally freeze me out.

Q. What did he say the change was?

Same objection.

A. Changing from the old style of insurance to the new one.

Q. Did he explain what the change was?

A. Agent left explanation.

Same objection.

352 A. I was to pay so much premium every year and each year for three years I was to receive a credit of one third of this fund which was to my credit one hundred thirty seven dollars and ninety odd cents.

Q. When was the first time that you know that they had changed the original plan?

A. I never knew it until he called my attention to it.

Q. Did you ever have notice that the assessments or premiums in any material way were going to be changed?

A. I never had any notice. My information I got entirely from Mr. Leonard.

Q. The original plan has not been indicated in the testimony?

A. It existed in the policy itself.

Q. The original plan was what?

Objected to as not best evidence.

A. The original plan was stated in the policy I suppose, but don't know as I have never read it through. The original plan was that I was to pay these amounts and that my guaranty was to guarantee that it would never be any higher, and that is the reason why I paid eighty two dollars for the purpose that it guaranteed me that I should be continually insured for that amount at no higher rate, or I would not have gone into it.

Q. Did you ever have any notice of any kind from the company that a change was to be made from the plan, as you have outlined, to what is indicated in this statement which you havr just put in as evidence?

353 Objected to as unimportant, irrelevant, immaterial and no foundation laid.

A. I never received any notice whatever except as stated.

At the request of Mr. Dillon and pursuant to a notice to produce, served on the defendants, Mr. Mitchell here produced a letter written and mailed at Milwaukee, Wisconsin June 4th 1900 to the Bankers Life Association, St. Paul, Minnesota, written by Mr. Samuel Wright.

Q. What was your reply?
A. That was a letter written by myself to the Bankers Life Association of St. Paul, Minnesota, dated June 4th, 1900.
Q. Did you receive any written proposition from the company or its agents about changing from this old plan to the new?
A. I received a written letter from Mr. Leonard, State manager, dated December 12th, 1899, enclosing a postal card for reply. I received it that day or the next. I do not recollect as to that.
Q. That statement that you have already put in evidence was how received?
A. That was given to me personally the first time I saw the agent—by Mr. Leonard.

We offer these in evidence as "Exhibit O."

Objected to as unimportant, irrelevant, immaterial and no foundation laid.
Witness handed "Exhibit N."

A. This (Exhibit P.) is a copy of the letter that I sent to
354 Mr. Leonard in answer to that one received from him which has been offered in evidence.
Q. Have you made an effort to get the original?
A. I have.

We offer "Exhibit P." in evidence.
Objected to as unimportant, irrelevant, immaterial and no foundation laid. No objection made upon the ground that the original letter is not offered in evidence.

Q. What transpired, if anything, between you and the company or its agents after writing "Exhibit P," if anything? Did you at any other time demand that your guaranty trust fund should be returned to you?
A. I did in October, 1899, and in November two or three times and when I met this Mr. Leonard I told him to pay me over about one hundred thirty seven dollars and I would consider where I would get my insurance.

Q. What is the one hundred thirty seven dollars that you speak of?

A. It is the amount he claimed that I was entitled to as my share of the reserve fund as per statement there.

Q. Is it an accumulation on the amount that you paid in?

A. It was the accumulation on the amount that I paid and which he agreed to allow me, if I took a policy under the new system.

Moved that answer be stricken out as not responsive, as unimportant, irrelevant and immaterial and no foundation laid.

355 Q. Did you receive any response to the letter which is now in evidence and marked "Exhibit N."

A. I did.

(Attorney for plaintiffs to attorney for defendants:) I hand you this to read what it is.

A. I received a letter from the Bankers Life Association dated June 8th, 1900, and this is it.

We offer this *as* evidence as "Exhibit Q."

Objected to as unimportant, irrelevant immaterial and no foundation laid.

Q. What action did you take after this in regard to paying assessments, after this conversation and these communications?

A. I immediately consulted some attorneys and with a number of other members of the association we had a meeting and discussed matters from time to time. The first attorney that I discussed the matter with was——

Objected to answer as unimportant, irrelevant, immaterial and no foundation laid.

A. Joshua Stark.

Q. Moved that the answer be stricken out as not responsive.

Q. What action did you take in regard to the payment of assessments?

Objected to as unimportant, irrelevant and immaterial and no foundation laid.

A. I notified Mr. Leonard and I made a demand for the guaranty that I would pay no more assessments. This was in October
356 1899, and I have paid no assessments since.

Q. State again briefly what induced you to take that action that you have indicated?

Objected to as unimportant, irrelevant and immaterial.

A. My loss of confidence in the company and the reason that it had been represented to me that by the payment of that guaranty fund I had guaranteed my assessments should not be over a certain

figure and that according to this statement they intended to violate that part of the agreement.

Q. What did he say, if anything in regard to the company abandoning its original plan and denizens without consulting members in that original plan, that is the assessment plan?

Objected to as unimportant, irrelevant and immaterial and hearsay and no foundation laid.

A. He stated that no new members would be taken under that system; that they were removing all the better class of risks as fast as they could to the new system and that if I remained it was only a question of a short time when I would be frozen out by the increase of the assessment and the fact that there would be no one left except the old and undesirable risks.

Cross-examination by Mr. MITCHELL:

Question. What is your business Mr. Wright?

Answer. I am a druggist. At the time I carried that insurance I was in the drug business until May 8th last year. I am now practicing law.

357 Q. When did you become complainant to this suit?

A. At its first inception. I do not recollect the date.

Q. How did you learn that this suit was about to be commenced?

A. I did not learn that it was about to be commenced. I was one of the originators.

Q. Do you know Mr. Edwin D. Carter?

Objected to.

A. Yes, that is I know a Mr. Carter.

Q. Do you know Mr. E. D. Carter?

A. I do not know him by the initials. I know a number of Carters.

Q. An Edwin D. Carter in the office of the Bankers Life?

Objected to as unimportant, irrelevant, immaterial and no foundation laid.

Q. Do you know of any Mr. Carter that has interested himself in the affairs of this association?

A. Here in Milwaukee?

Q. Yes, sir.

A. Not here in Milwaukee.

Q. Do you know a man named Carter who has interested himself in the affairs of this association anywhere else?

A. I know a man Carter, but I do not know what his business is. I know a Mr. Carter, clerk for Mr. Dillon.

Q. You knew Mr. Carter, clerk for Mr. Dillon.

A. I do know that a Mr. Carter clerked for Mr. Dillon.

358 The question is objected to as evidence as being unimportant, irrelevant, immaterial and no foundation laid, and improper cross-examination.

Q. Did you meet this Mr. Carter in Mr. Dillon's office.

Same objection.

A. I was never in Mr. Dillon's office in my life.

Q. You do not know a Mr. Carter then who is interested in this law suit?

A. I do know a Mr. Carter who is interested in this matter, but I have no dealing with him.

Q. Has this man named Carter ever stated anything to you about this company?

Same objection.

A. While I do know a Mr. Carter, I do not know what connection he had with it. He may have been one of its agents. I do not know how that is.

Q. How do you know that there was a Mr. Carter when he was Mr. Dillon's clerk?

Same objected to as being unimportant, irrelevant, immaterial and not proper cross-examination.

A. Some papers were sent up to me, but I do not recall the fact and would not say it was by him.

Q. By Carter?

A. I cannot recall now who it was, but he introduced himself as Mr. Carter, what his initials are I do not know.

Q. He brought you some papers relating to this case?

A. Affidavits or something, I do not now recall just exactly
359 what it was. It seems to me it was something. I cannot swear to it.

Same objection to that question.

Q. You sat that this Mr. Carter brought you some paper in connection with this suit?

A. That is my recollection now.

Q. Did you sign it?

A. I do not recollect what it was.

Same objection.

A. Speaking of him I associated him eith this company.

Q. Did you ever sign any paper presented to you by this man Carter?

A. I do not recollect, but it seems that I signed some paper.

Same objection.

Q. How long ago?

A. The paper will show. I cannot recollect this except by the paper itself.

Q. You think the paper was an affidavit in this suit?

A. I could not say. The impression I have is that it was an affidavit.

Q. Was it about a month ago or two months?

A. I cannot recollect. If I saw tha paper I might tell.

Q. How would you recognize it?

A. If I saw that paper and saw my signature it might refresh my memory. I have had no business with this Mr. Ca-ter as agent for this company.

360 Same objection.

Q. You signed a paper than as affidavit in this suit, presented by that Mr. Carter?

Same objection.

A. I did not say so.

Q. What do you mean by that you might refresh your recollection?

Same objection.

A. I say I do not know what the paper was, but on seeing same I might refresh my memory. But as you have not the paper I cannot say anything that I can swear to.

Q. Did this man come to you as representative of any attorney?

Same objection.

A. You mean Carter came as a representative?

Q. Yes.

A. I do not know, he may have come from Mr. Iverson. I do not recollect.

Q. This man Carter came to you with some papers from your attorneys to sign in this case?

Objected to.

A. I won't swear that he did, for I don't know. You bring the paper and then maybe I can tell you. I swear simply that I do not know.

Q. How did you know that his name was Carter?

A. Because you asked if I knew a man by the name of Carter. The first time that I ever heard Carter's name that I know of, that I recall, was a letter from Mr. Iverson and that is——

Q. I asked you one question and I want you to answer it
361 according to the fact. Is it not true that a man named Carter has been to you with papers in connection with this suit for you to sign?

A. I will not swear to anything of the kind as I have no recollection.

Q. You won't say yes or no?

A. I cannot say whether his name was Carter, Jones or Mitchell. I had no personal acquaintance.

Q. I would like to know where you got the impression that this man was once Dillon's clerk.

A. I can tell you that very easily.

Q. I want an answer to that question in regard to Carter being Mr. Dillon's clerk.

A. I was informed one reason why Mr. Iverson withdrew from the case was because of his prejudice against a man by the name of Carter.

Q. How does this connect Mr. Carter in your mind with Messrs. Dillon and Goetz?

A. It seemed rather peculiar that Ive-son should object to this man Carter. I have never seen Iverson to ask him and therefore do not know.

Q. How does the fact that Mr. Iverson objected to Carter connect Carter in your mind with your attorneys?

A. From the fact that I was shown a letter from Mr. Iverson stating the reason he objected to this man Carter. The letter purporting to be from Mr. Iverson. I have never followed it up to see whether it was his letter or not.

362 Q. Did this meeting of policy holders take place in Milwaukee?

A. I could not tell you. The first meeting I believe was in my office.

Q. Approximately how long ago was that?

A. It must have been probably in June of 1900. It might have been even before that. I would say that it was about that time judging from those letters.

Q. Can you fix the date in reference to the time when an indictment was preferred to the United States district court here against two officers of this company?

A. I know nothing about it. I saw it in the papers.

Objected to as unimportant, irrelevant immaterial and no foundation laid, and improper cross examination.

Q. You knew that there was two proceedings of that kind?

A. I was informed by picking up the paper one morning that there was to begin some kind of proceedings. I have the copies in my office. I immediately wrote to the company asking for an explanation, and I have their return.

Q. I will ask you to fix the date of these meetings of members that you spoke of in respect to the action of that indictment.

A. I never heard them spoken of in any way whatever.

Q. I ask you to fix the date of these meetings of members in reseoect to the indictment proceedings. Were they called upon some notice or merely accidental?

A. I could not say that they were merely accidental. They
363 had no connection with the fact that I received letters from the company. They satisfied me and I paid no further attention to it. I paid my assessments after that.

I move that the answer be stricken out as not responsive.

Q. In stating the assessment that you paid, you stated that you paid an assessment twice a year of twelve dollars, you mean once a year?

A. Yes. Twelve dollars and thirty cents once a year, but I cannot state exactly without looking at my receipts, but that they were regular during the entire time, and that is the purpose that induced me to become insured with the company.

Mr. MITCHELL: That is all.

Mr. DILLON: That is all.

SAM'L WRIGHT.

Subscribed and sworn to before me this 13th day of March, A. D. 1902.

WILLIAM MILLARD,
Notary Public.

[SEAL.]

My commission expires Aug. 22, 1904.

(The signature of Samuel Wright appears at the bottom of every page of the original.)

364 EXHIBIT "H."

No. 16069. Age, 41.

The Bankers Life Association of St. Paul, Minnesota.

Annual dues, $6.15. Mortuary assessment, $0.82.

This certifies that the Bankers Life Association of Minnesota, upon the written application of Samuel Wright of Milwaukee in the State of Wisconsin and upon his representations therein contained, which application and the answers therein made are hereby made a part of this contract, has on this tenth day of December A. D. 1892, admitted him to one full membership in said association, and in virtue thereof he shall participate in and enjoy all the benefits conferred by said association so long as he shall perform the duties and obligations incident to such membership according to the articles of incorporation of such association.

The said association, in consideration that said member has made the guaranty deposit and payments called for by said articles, hereby covenants and agrees that said association, after the death of said member and within sixty days after due proof thereof furnished thereto, will pay at the office thereof, in St. Paul, in the State of Minnesota, unto his wife Catherine J. Wright as
365 trustee for self and children, a sum of money equal to two per cent. of the guaranty trust fund then held by said corporation in pledge therefor, not exceeding, however, the sum of two thousand dollars provided the statements, representations and an-

swers *t*made in said application are all true in fact; and provided that said member shall have paid all the annual dues and mortuary assessments imposed upon him during his life pursuant to said articles; and provided that this certificate shall become null and void if death occurs from self-destruction within two years from this date, said member being sane or insane, or if death shall have been caused by the hand of justice, or in consequence of the violation of any law; and provided, further, that no action shall be brought or sustained upon or under this certificate unless commenced within one year after the day of the death of said member.

In testimony whereof, said corporation has caused the names of its president and secretary to be signed and its corporate seal to be affixed.

CORTLANDT M. TAYLOR, *President.*

[SEAL.] DOUGLAS PUTNAM, *Secretary.*

366 EXHIBIT "I."

No. 16068. Age, 41.

The Bankers Life Association of St. Paul, Minnesota.

Annual dues, $6.15. Mortuary assessment, $0.82.

This certifies that the Bankers Life Association of Minnesota, upon the written application of Samuel Wright of Milwaukee, in the State of Wisconsin and upon his representations therein contained, which application and the answers therein made are hereby made a part of this contract, has on this tenth day of December A. D. 1892, admitted him to one full membership in said association, and in virtue thereof he shall participate in and enjoy all the benefits conferred by said association so long as he shall perform the duties and obligations incident to such membership according to the articles of incorporation of such association.

The said association, in consideration that said member has made the guaranty deposit and payments called for by said articles, hereby covenants and agrees that said association, after the death of said member and within sixty days after due proof thereof furnished thereto, will pay at the office thereof, in St. Paul, in the State
367 of Minnesota, unto his wife Catherine J. Wright as trustee for self and children, a sum of money equal to two per cent. of the guaranty trust fund then held by said corporation in pledge therefor, not exceeding, however, the sum of two thousand dollars provided the statements, representations and answers made in said application are all true in fact; and provided that said member shall have paid all the annual dues and mortuary assessments imposed upon him during his life pursuant to said articles; and provided that this certificate shall become null and void if death occurs from self-destruction within two years from this date, said member being sane or insane, or if death shall have been caused by the

hand of justice or in consequence of the violation of any law; and provided, further, that no action shall be brought or sustained upon or under this certificate unless commenced within one year after the day of the death of said member

In testimony whereof? said corporation has caused the names of its prsident and secretary to be signed and its corporate seal to be affixed.

CORTLANDT M. TAYLOR, *President.*
[SEAL.] DOUGLAS PUTNAM, *Secretary.*

368 Envelope marked as follows:

The Bankers Life Association of Minnesota St. Paul, Minn. No. 16068–9 Amount $4000 Insurance on the life of Samuel Wright. Annual dues $12.30 Casual assessments $1.64 Fire and Marine building.

369 EXHIBIT "J."

The Bankers Life Association of St. Paul, Minnesota.

Assets, August 31, 1897.

United States registered bonds (market value)	$626,000.00
Guaranty notes, not yet due on policies in force	63,276.34
Loans secured by collateral	42,000.00
Cash in Merchants national bank St. Paul	45,435.04
Cash in Nat. Ger. American bank, St. Paul	34,271.43
Cash in First national bank, St. Paul	32,852.70
Special deposit in St. Louis Nat. Bk., St. Louis, Mo	1,000.00
Cash in office	446.74
Total assets	$845,282.25

Death losses due and unpaid,—None
Cost, the lowest consistent with absolute security.

Assets.

31st December, 1890 were	$271,436.28
31st December, 1891 "	356,821.97

370

31st December 1892, were	529,138.99
31st " 1893 "	567,942.63
31st " 1894 "	619,751.52
31st " 1895 "	672,073.01
31st " 1896 "	766,841.43
31st August, 1897 "	845,282.25

This record of advancement is of itself an undeniable testimony as to the sagacity and energy of this company's management, as

well as to the popularity of its plans and its methods of doing business.

The aim, object, desire, purpose—in fact, the sum total of all that pertains to insurance, is protection. Absolute insurance protection, the best obtainable, can be had of the Bankers Life Association of St. Paul, Minnesota.

Agents wanted.

For desirable territory address Clarence E. Secor, supt. of agencies.

371 *Death Losses, the Bankers Life Association, St. Paul, Minn.*

Death losses paid to June 22, 1897 ..... $1,682,625.20

Death losses paid since June 22, 1897.

Name of deceased.	Residence of deceased.	Date of payment.	Amount paid.
Henry T. Raasch	Milwaukee, Wis	June 29	$2,000
William Y. Byers	Tacoma, Wash	July 8	2,000
Lewis J. Baldwin	Chicago, Ill	Aug. 5	2,000
Thomas S. Price	Fresno, Cal	Aug. 5	4,000
Robert C. Heydlauff	Ashland, Wis	Aug. 5	6,000
Edward A. Douglass	St. Paul, Minn	Aug. 5	4,000
Edward W. Mee	Duluth, Minn	Aug. 7	4,000
Joshua Sutter	Eau Claire, Wis	Aug. 7	2,000
Dennis O'Brien	Willmar, Minn	Aug. 16	6,000
John C. Meloy	Hastings, Minn	Aug. 16	2,000
Lafayette D'Giette	Nebraska City, Neb	Aug. 16	2,000
Edmund Davis	Hyde Park, Mass	Aug. 30	2,000
Joseph Killgore	West Chester, Pa	Aug. 30	4,000
Oliver A. Horner	Emmittsburg, Md	Aug. 30	6,000
Edward C. Chandler	Duluth, Minn	Aug. 30	4,000
William S. Timerman	St. Paul, Minn	Sept. 17	2,050
372 William H. Brinley	Minneapolis, Minn	Sept. 17	6,000
Charles P. Allen	Princeton, Ill	Sept. 28	2,000
Edmund G. Butts	Stillwater, Minn	Sept. 28	6,149
Charles Bunting	Blackfoot, Idaho	Oct. 8	6,000
August Hammer	St. Paul, Minn	Oct. 8	2,050
Paul McKey	Marquette, Mich	Oct. 8	6,000
Darwin E. Yale	Cannon Falls, Minn	Oct. 16	2,038
Bradley Minton	Claysville, Pa	Oct. 20	2,000
Paid since June 22, 1897			$86,347.00

Total death losses paid to Nov. 1, 1897 ..... $1,768,972.20

The Foundation Principle.

The central feature of the Bankers Life Association is the guaranty trust fund—it is the bulwark of the company. So long as a member meets his own payments promptly he cannot suffer in consequence of the negligence of others, for this fund will protect him. This company has the largest amount of assets for each $1,000 in

force that has ever been created by any of the leading companies upon the natural premium plan. It is the only life insurance company of any kind that invests its guaranty trust funds exclusively in U. S. bonds for the protection of members.

CORTLANDT M. TAYLOR, *President.*

DOUGLAS PUTNAM, *Secretary.*

373 EXHIBIT "K."

Death Losses Paid by the Bankers Life Association, St. Paul, Minn.

Death losses paid to March 10, 1897 ..... $1,625,966.20

Death losses paid since March 10, 1897.

Name of deceased.	Residence of deceased.	Date of payment.	Amount paid.
Joseph Hunstiger	St. Cloud, Minn.	March 15	$2,027
William P. Cash	Kernville, Cal.	April 14	2,035
Patrick H. Lineen	Chicago, Ill.	April 14	2,000
John S. Proctor	Stillwater, Minn.	April 14	6,169
Henry Kuhlmann	Arlington, Minn.	April 14	2,056
William H. Wallis	Milwaukee, Wis.	April 14	2,000
John M. L. Macdonald	Minneapolis, Minn.	April 24	2,000
Dr. Charles B. Marshall	Stillwater, Minn.	April 24	2,044
Ernest L. Bickford	Spokane, Wash.	April 24	4,000
William W. Braden	St. Paul, Minn.	April 24	6,132
Marshall N. Pierce	Winona, Minn.	April 24	6,099
Nels P. Peterson	Minneapolis, Minn.	April 24	2,000
James Cain	Rosemount, Minn.	May 20	2,000
Frederick Richter	St. Paul, Minn.	May 20	2,000
374 Henderson D. Morse	Winona, Minn.	May 20	2,000
Peter Weberg	Centre City, Minn.	June 15	2,060
William Badger	Boston, Mass.	June 15	2,000
Alfred J. Urlin	Missoula, Mont.	June 15	2,000
Philip Reilly	St. Paul, Minn.	June 21	6,037
Paid since March 10, 1897.			$56,659.00

Total death losses paid to June 22, 1897 ..... $1,682,625.20

The Foundation Principle.

The central feature of the Bankers Life Association is the guaranty trust fund—it is the bulwark of the company So long as a member meets his own payments promptly he cannot suffer in consequence of the negligence of others, for this fund will protect him. It has the largest amount of assets for each $1,000 in force that has ever been created by any of the leading companies upon the natural premium plan. It is the only life insurance company of any kind that invests its trust funds exclusively in U. S. bonds for the protection of members.

CORTLANDT M. TAYLOR, *President.*

DOUGLAS PUTNAM, *Secretary.*

375 EXHIBIT "K."

1880. *A Successful Company.* 1897.

The Bankers Life Association of St. Paul, Minnesota.

Assets, January 1, 1897.

United States registered bonds (market value)	$505,000.00
Interest-bearing bank certificates	96,000.00
Cash in bank	36,946.26
Guaranty notes not yet due on policies in force	75,089.42
Loans secured by collateral	51,400.00
Interest accrued but not due	1,829.62
Cash in office	376.13
Total assets	$766,641.43
Death losses due and unpaid	None
Total actual liability	None

A record of seventeen years.

$24,000,000.00 insurance in force.

$766,641.43 total assets.

$1,650,000 paid in death losses.

Assets.

31st December,	1890,	were		$271,436.28
31st "	1891,	"		356,821.97
31st December,	1892,	were		529,138.99
376 31st "	1893,	"		567,942.63
31st "	1894,	"		619,751.52
31st December,	1895,	were		672,073.01
*31st "	1896,	"		766,641.43*

NOTE.—This is a strong financial showing, and places the Bankers Life above the largest natural premium companies in the country on the basis of assets to amount at risk.

The aim, object, desire, purpose—in fact, the sum total of all that pertains to insurance, is protection, the best obtainable, can be had of the Bankers Life Association of St. Paul, Minnesota.

Agents wanted.

For desirable territory, address Clarence E. Secor, supt. of agencies.

377 EXHIBIT "L."

The central feature of the Bankers Life Association is the guaranty trust fund—it is the bulwark of the company. So long as a member meets his own payments promptly he cannot suffer in consequence of the negligence of others, for this fund will protect him. It has the largest amount of assets for each $1,000 in force that has ever been created by any of the leading companies upon the natural premium plan. It is the only life insurance company of any kind that invests its trust funds exclusively in U. S. bonds for the protection of members.

Our Assets.

31st	December,	1890	were.....	$271,436.28
31st	"	1891,	"	35[illegible],821.97
31st	"	1892	"	529,138.99
31st	"	1893	"	567,942.63
31st	"	1894	"	619,751.52
31st	"	1895	"	672,073.01
31st	"	1896	"	770,000.00

CLARENCE E. SECOR,
Superintendent of Agencies.

377½ Cortlandt M. Taylor, president; Gen. Jno. B. Sanborn, vice president; Douglas Putnam, secretary; C. H. Bigelow, treasurer.

1880. *A Successful Company.* 1896.

The Bankers Life Association of St. Paul, Minn.

A record of sixteen years.

$23,644,000.00 insurance in force.

$770,000.00 total assets.

$1,500,000.00 paid in death losses.

Trustees:

C. H. Bigelow, president St. Paul Fire & Marine Insurance Co.
Wm. R. Merriam, president Merchants national bank.
M. Auerbach president Union bank
C. Livingston, president St. Paul Gas Light Co.
Gen. Jno. B. Sanborn attorney at law

NOTE.—*The cost of our insurance for the past six years averaged the same as for the preceding six years.*

ST. PAUL, MINN., *July* 16/97.

Samuel Wright, Esq., Milwaukee, Wis.

DEAR SIR: In again calling your attention to the merits
378 of this compant your special attention is called to the following, viz: *You entered this association at age* 41. The estimated maximum cost of $1,000 insurance at this age is only $15,38.

A comparison of our rates with the leading natural premium companies of America may be of interest to you as a member:

Mutual Reserve Fund Life Association of New York, (annual rate for above age and amount)	$20.10
Bay State Beneficiary, Westfield, Mass. (above age & amt	18.88
Covenant Mutual Benefit, Galesburg, Ill. " " " ..	20.76
Chicago Guaranty Fund, Chicago, Ill. " " " ..	22.51
Hartford Life Annuity of Hartford, Conn. " " " ..	19.30
Massachusetts Benefit Life, Boston, Mass. " " " ..	20.69
Security Mutual Life, Binghamton, N. Y. " " " ..	21.40
Northwestern Masonic Aid, Chicago, Ill. " " " ..	21.28

To sum up, Bankers Life Association of St. Paul, annual rate for $1,000 *insurance (age* 41)	$15.38
Average cost per thousand insurance (above age) eight leading natural premium companies	$20.62

In a word, you can carry $6,000 insurance in the Bankers Life Association of St. Paul (age 41) for $31.44 *less money* than it can be obtained for in the above mentioned companies, or a saving of $5.24 per thousand. *Or to put it in a more attractive form*, we furnish $6,000 insurance for the same money that the leading assessment
379 companies would charge you for $4,000.

To resume, old line rate (age 41) $33.40 per thousand Eight leading assessment companies (age 41) $20.62 per thousand Bankers Life Association of St. Paul, $15.38 per thousand Under our guaranty reserve fund system you purchase the greatest amount of insurance at the least possible cost, backed up by the strongest possible elements of strength and security as safe as the greatest of the old-line companies, at one half the cost.

The solid financial condition of the company, its large guaranty trust fund, its liberal policy and its promptness in paying all legitimate claims make the Bankers Life the most desirable company for the policy holder.

I will gladly furnish any further information you may desire in regard to the company and its methods, and shall be pleased to hear from you at an early day.

Yours truly, CLARENCE E. SECOR.

Exhibit "M."

380 EXHIBIT "N."

Samuel Wright, attorney at law, 600 Grand avenue.

MILWAUKEE, *June* 4, 1900.

Bankers Life Asso't'n of Minn., St. Paul, Minn.

GENTS: In October last I ordered your State manager Mr. E. W. Leonard to cancel my certificates of policies Nos. 10608–9 at once as I did not desire to embrace your new plan. At that time he gave me a statement showing that I had coming to me the sum of ($137.00) one hundred and thirty-seven dollars.

I now demand of you the return to me at once of the above amount with interest thereon together with any other sum that may — due me from your company.

I am respectfully yours, SAMUEL WRIGHT.

381 EXHIBIT "P."

DEC. 13, –9—.

E. W. Leonard, Esq., c/o Hotel Blatz, city.

DEAR SIR: Yours of the 12th at hand contents noted. I see no reason for changing my mind since I saw you two or three months ago. I shall adhere to my then determination which was to cancel.

I am respectfully yours, SAM'L WRIGHT.

382 EXHIBIT "N. N."

Bankers Life Association of St. Paul, Minn.

Upon application and without re-examination. Exchange of certificate — of membership for policies in the Bankers Life Association will be made as follows:

Age at entrance 41

Certificate No. —. Date 12/10/92. Am't 2,000 (an amount equal to guaranty payment)	$41.00
Certificate No. —. Date 12/10/92. Am't 2,000 (an amount equal to guaranty payment)	41.00
Profits or surplus allowed by company	54.94
Total credit allowance	$134.94

Attained age 48

Annual Premium Guaranteed Option Policy, $142.00.

	Applicant pays—	Allowed by company.	Total.
1st year	$96.36	$45.64	$142.00
2nd year	96.36	45.64	142 00
3rd year	96.34	45.66	142.00
	289.06	136.94	426.00

Table of Loans, Paid-up Policies, or of Continued Insurance.

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At end of—	First option. Cash or loan value.	Second option. Paid-up policies.	Third option. Continuous insurance for $4.000.
3rd year	$196.00	$284.00	2 years 1 mo'
4th year	268.00	420.00	2 " 11 mos'
5th year	344.00	556.00	3 " 8 "
10th year	772.00	1176.00	6 " 2 "
15th year	1200.00	1734.00	7 " 0 "
20th year	1584.00	2192.00	6 " 11 "

After a member has carried this attractive policy for a number of years, should discontinuance for any reason become necessary he does not lose his surplus payments, but automatically its value is given him in a paid-up policy. Or, if he prefers the company will make him a loan, or will extend the entire face of the policy and require no further payments thereon. Not only so, but, being a purely mutual company, all profits of every kind accrue to the members.

These advantages, taken in connection with the table of rates show how exceedingly attractive the policy is. Furthermore it is as free from restrictions of any kind as can well be. The members may reside in any part of the world, engage in any occupation outside of military, change his beneficiary whenever he desires, and at all times have thirty days' grace in which to make his payments, the insurance meantime continuing uninterruptedly in force.

384 1880. *A Successful Company.* 1899.

The Bankers Life Association of St. Paul, Minnesota.

Assets January 1, 1899.

United States registered 4 per cent. bonds (market value)	$651,000.00
Guaranty notes not yet due on policies in force	55,918.25
St. Paul city certificates of indebtedness	40,000.00
Loans secured by collateral	34,000.00
Accrued interest not yet due	2,321.25
Cash in National German American bank	48,523.39
Cash in First national bank	31,888.12
Cash in Merchants national bank	40,674.54
Special deposit in St. Louis national bank St. Louis, Mo.	1,000.00
Cash in office	124.03
Total assets	$905,449.58

Death losses due and unpaid, none.
Cost the lowest consistent with absolute security.

Our assets.

December 31, 1890
$271,436.28
December 31, 1891,
$356,821.97
December 31, 1892
$529,138.99
December 31, 1893
$567,942.63
December 31, 1894
$619,751.52
December 31, 1895
$672,073.01
December 31, 1896
$766,641.43
December 31, 1897
$865,800.68
December 31, 1898
$905,449.58

Not how big but how strong.

385

386 EXHIBIT "O."

Cortlandt M. Taylor, president; Gen. J. B. Sanborn, vice president; Douglas Putnam, secretary; C. H. Bigelow, treasurer.

Trustees: C. H. Bigelow, J. B. Sanborn, M. Auerbach, W. R. Merriam, C. Livingston.

The Bankers Life Association of Minnesota.

Over two millions paid in death losses.

Assets over $900,000.00.

U. S. registered bonds as securities.

$580,000.00 (par value) U. S. 4% bonds deposited with insurance department of Minnesota in trust for policy holders.

MILWAUKEE, *Dec. 12th*, 1899.

Mr. Samuel Wright, city.

DEAR SIR: I desire to inform you that the transfer of our business in this city from the assessment plan to our new guaranteed option policy is progressing most satisfactorily, and we have here in the last few weeks transferred over three-fourths of our
387 total business, and our new proposition is meeting with the most favorable consideration by all. My company is placing on their books, an average *fo* about 2,000,000 of transfers per month, so you can readily see that the time is very near at hand, when our efforts will be accomplished, that have been so persistently demanded, and accepted so readily by our policy holders at large. The rate on our old policies will raise materially without a doubt on our next assessment. A more favorable or opportune time for the transfer of your old policy will not occur than at present. If you desire, the assessment now due can be apportioned during the next three years, making all payments extremely light to you and a more favorable policy as to rates and option, certainly cannot be puechased. My business here now is nearing its completion, consequently my stay in this city — very short. I trust that you will at once favorably consider this matter and arrange with me for an interview either by telephone or by letter c/o Hotel Blatz—and I feel warranted in saying that our new policy will at all times in the future meet your approval and our guaranties cannot be questioned. Trusting to hear from you at once, I am,

Yours very respectfully, E. W. LEONARD, A. D.,

State Manager.

388 (Attached to the foregoing is an envelope, marked E. W. Leonard, State manager, 1532 Monadnock bldg. Chicago, Ill. Addressed to Mr. Samuel Wright 600 Grand avenue, city.

Postmarked "Milwaukee Wis. Dec. 11 1899. and with a cancelled two-cent stamp upon it.

There is also attached a postal card addressed to

E. W. LEONARD,

Chicago,

Illinois.

State manager Bankers Life Ass'n 1532 Monadnock bldg.

And bearing on the back in print:

E. W. Leonard.

DEAR SIR: Replying to your communication will say that you may call on me and submit to me your proposition in person.

Yours respectfully,

—— ——.

Address ——.

389 EXHIBIT "Q."

The Bankers Life Association of St. Paul, Minn.

Organized 1880.

Clarence E. Secor, manager.

ST. PAUL, MINN., *June* 8, 1900.

Samu'l Wright, Esq., 600 Grand Ave., Milwaukee, Wis.

DEAR SIR: Answering your inquiry of the 4th inst. will state with all possible brevity:

The new policy provides for loans, paid-up and extended insurance, but there is *no such provision* in the old post-mortem contract such as you *carried* with us. In short, it was an assessment policy pure and simple, viz: "Pay for what you get and get what you pay for" *the same as fire insurance.*

Yours truly, BANKERS LIFE ASSOCIATION,
Per CLARENCE E. SECOR.

390 Bankers Life Association of St. Paul, Minn.

Organized 1880.

Clarence E. Secor, manager.

ST. PAUL, MINN., ——, 1900.

DEAR SIR: One of the more recent commissioners, Mr. Schofield, of Connecticut, in his last annual report devoted quite a little space to arguing the proposition that a life insurance institution, to offer safe protection, *must have an adequate reserve.* To do this is no easy matter. The task is both constructive and diplomatic. Constructive as regards future business, and diplomatic as regards old business. There is new business to be secured, *and besides, the men who have*

been written on crude and imperfect plans are to be kept good natured, so as not to be a hindrance to forward work.

The man who, with these two problems to solve, succeeds in building up institutions along sound lines will be entitled to much credit. *They will make mistakes, but any one who will take the time to look over the development by which the original level premium companies have attained their present position, will be convinced that mistakes are not indigenous to assessment life insurance. There is plenty of room and plenty of business for these transformed institutions.*

Yours truly, CLARENCE E. SECOR.

391 *Certificate.*

STATE OF WISCONSIN, } ss:
County of Milwaukee, }

Be it known that I took the annexed deposition of Samuel Wright pursuant to the annexed notice (or order); that I was then and there a notary public in and for said county and State; that I exercised the power of that office in taking such deposition; that by virtue thereof, I was then and there authorized to administer an oath; that each witness, before testifying, was duly sworn to tell the whole truth and nothing but the truth relative to the cause specified in the annexed notice (or order); that the testimony of each witness was correctly read over to him by me before he signed the same; that the examination was conducted on behalf of the defendant by W. D. Mitchell.

Witness my hand and seal this 13th day of March 1902.

WILLIAM MILLARD,
[SEAL.] *Notary Public.*

My commission expires Aug. 22, 1904.

Directions for Taking Depositions Without the State, upon Notice.

To —— ——, Esq.

SIR: You have been selected to take the deposition of —— —— in pursuance of the notice (or order) herewith inclosed. In
392 taking such deposition you will please observe the following directions:

First. The deposition must be taken at the place specified in the notice or order and the examination be commenced at the time or within one hour thereafter.

Second. Before testifying each witness must be sworn by you to tell the whole truth and nothing but the truth relative to the cause specified in the notice or order.

Third. The testimony of the witness must be reduced to writing by you. The proceeding may be adjourned from day to day until the examinations are closed.

Fourth. Prefix such testimony with the title of the cause as in the notice or order. Either party may appear in person, or by an agent or attorney, and take part in the examination.

Fifth. The testimony of each witness when completed must be carefully read over by you to him, and he be permitted to add to or to qualify the same if he desires.

Sixth. The witness must sign his name, or make his mark, at the end of the deposition, and upon each of paper- on which any portion of his testimony is written.

At the end the officer should add jurat as follows: "Subscribed and sworn to before me —— —— 1—"

[L. S.] "—— —— (Signed officially by the officer.)"

393 Seventh. Fill out *nad* sign officially the foregoing certificate. Then form the papers into one package, fastened together securely in the following order: Copy of the notice or order, depositions, exhibits (if any) and certificate. Add a minute of the fees of officer and witness, and by whom paid.

Eighth. Inclose the package in an envelope. Across the end of the envelope endorse: "Deposition of —— —— taken to be used on the trial of an action now pending in — court in and for —— county, Minnesota, wherein —— —— is plaintiff and —— —— is defendant." Then send it by mail, prepaid, directed to the justice of the peace or the clerk of the court in which the action is pending, at —— P. O., —— county, Minnesota.

Dated at —— Minn., —— 1—

—— ——.

Fees of notary & stenographer 19.36
Paid by Dillon & Goetz.

(Endorsed:) "Deposition" of Samual Wright for complainants. Received March 18th 1902 Henry D. Lang, clerk. Filed March 18th 1902 Henry D. Lang, clerk.

394 Wrapper enclosing deposition from Wm. Millard 151 6th St. Milwaukee Wis., addressed to Henry D. Lang Esq. clerk United States district court Federal building St. Paul Minn. bears two ten-cent, and one six-cent stamp, duly cancelled, is post-marked Milwaukee Wis. Registered Mar. 17, 1902.

(Endorsed:) Received March 18th 1902 Henry D. Lang clerk. Filed March 18th 1902 Henry D. Lang clerk.

William Millard, manager of estates, 151 Sixth street. Tel. 100 Main.

MILWAUKEE, *March* 22, 1902.

This is to certify that in the deposition of Samuel Wright in the case of Iversen *vs.* Minnesota Mutual Life Ins. Co., taken before me on the 13th inst. that in the transcript by the stenographer the word

"unimportant" was used instead of "incompetent" wherever objection was made by attorney for defendant. The word "incompetent" was the one used in every case where objection was made.

[NOTARIAL SEAL.] WILLIAM MILLARD,
Notary Public.

My commission expires Aug. 22, 1904.

MARCH 22, 1902.

STATE OF WISCONSIN, }
County of Milwaukee. }

(Endorsed:) Certificate of Wm. Millard, notary public concerning correction in deposition of Samuel Wright *deposition* Filed March 24 1902 Henry D. Lang clerk by Louise B. Trott deputy.

395 *Copy of Notice to Take Depositions.*

In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, *et al.* } C. Equity. 783.

Notice to take depositions.

SIRS: You will please take notice that the depositions and testimony of Esdras B. Trubey, who lives and resides in the city of Chicago, and Wesley L. Knox and Frederick S. Capron, who live and reside in the town of Evanston, in the State of Illinois, and more than one hundred miles from the place of trial of the above entitled action, whose testimony is wanted on behalf of the complainants in said action, will be taken on behalf of said complainants by and before Morris Panush a notary public in and for the county of Cook and State of Illinois, at the office, room number 1508 Masonic temple, in the city of Chicago, in the State of Illinois aforesaid, on Tuesday, the 11th day of March, 1902, at ten (10) o'clock in the forenoon.

And that the taking of said depositions and testimony will be adjourned from day to day until completed.

396 Dated at Chicago, Illinois, this 27th day of February, A. D. 1902.

Yours, etc., DILLON & GOETZ,
Solicitors for Complainants.
JOHN F. BYERS, *Of Counsel.*

To Messrs. How, Taylor and Mitchell, solicitors for defendants, and Mr. T. E. Palmer, their counsel.

Service of above notice by copy, admitted this 4th day of March, 1902.

HOW, TAYLOR & MITCHELL,
Solicitors for Def'ts.

397 In the Circuit Court of the United States of America for the District of Minnesota

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, *et al.* } C. Equity. 783.

Testimony taken before me, Morris Panush, a notary public in and for Cook county, State of Illinois, pursuant to notice by Messrs. Dillon & Goetz, solicitors for complainants (John F. Byers, of counsel), to Messrs. How, Taylor & Mitchell, solicitors for defendants, and Mr. T. E. Palmer, their counsel.

398 FREDERICK S. CAPRON, a witness on behalf of the complainants herein, being first duly sworn by me as a witness to the above cause, previous to the commencement of his examination, to testify the truth as well on the part of the complainants as of the defendants, in relation to the matter in controversy between said complainants and defendants, so far as he should be interrogated, testified and deposed as follows:

Direct examination by Mr. DILLON:

Q. You may state your name?
A. My name is Frederick S. Capron.
Q. Where do you reside, Mr. Capron?
A. I live in Evanston.
Q. Cook county, Illinois?
A. Cook county, Illinois.
Q. What relation, if any, do you bear to the Minnesota Mutual Life Insurance Company, organized from the Bankers Life?
A. I hold a certificate of insurance.
Q. You hold a certificate?
A. In the membership, Bankers Life Association of St. Paul.
Q. When did you become a member through this certificate?
A. It was in May, I think, 1877.
Q. Are you still a member?
A. I am.
Q. You paid your assessments all—from——
399 A. Paid every assessment so far.
Q. What can you say in regard to uniformity of those assessments?
A. They—the assessments for the most part have been as indicated on the latter part of the policy, $1.18 for each death loss, and

$8.85 were the annual dues, and the majority of the—of the—certificate—the assessments were for the death losses, and amounted usually to $11.80. There is some few variations.

Q. These, you say, have been uniform?

A. Uniform—uniform.

Q. The assessments have been the same up to date, or not?

A. Until——

Mr. MITCHELL: That is objected to as incompetent, irrelevant and immaterial.

Mr. DILLON: Go ahead, answer the question.

A. Answer the question?

Q. Yes, whether or not they have been uniform?

A. Until quite recently, I am not able to say just what date, the death losses—assessments have been increased, and I believe without variation; I am not quite sure about that, to $16.52.

Q. Did they increase prior to January, 1899?

Mr. MITCHELL: Same objection.

A. I should think not.

Mr. DILLON: The increase that you speak of has occurred
400 since January, 1889?

A. That is my impression.

Mr. MITCHELL: Same objection, to that question.

Mr. DILLON: When you became a member, did you pay anything into what was known as the "guaranty trust fund"?

A. I did.

Q. How much?

A. $59.

Q. What representations were made to you in regard to the use of that fund, and the purpose for which you were to pay?

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial—no foundation laid.

A. An agent for the company by the name of Andrus—William Andrus—residing here in Chicago, persuaded me to take out this certificate, and in using other arguments and in speaking of the—I questioned, as they were then a new company, comparatively—my policy being number 4031, I think,——

Mr. DILLON: Go ahead, as to the representations.

A. And I had a query with him——

Mr. MITCHELL: I have the same objection to all this answer.

Mr. DILLON: What condition was there in regard to the payment of this trust fund in order that you might become a member—what conditions were made?

401 Mr. MITCHELL: Objected to as incompetent and irrelevant.

Mr. DILLON (continuing): By the agents in order that you might

become a member? That is, in regard to paying into the guaranty trust fund?

Mr. MITCHELL: Same objection, incompetent, irrelevant, immaterial, no foundation laid.

Mr. DILLON: I make the question more plainly: Was it necessary that you pay this guaranty trust fund—into this guaranty trust fund, in order to become a member?

A. That was one of the conditions.

Q. State further in regard to the representations made by this agent, Andrus, as to the use which this guaranty trust fund was to be placed?

Mr. MITCHELL: That is objected to as incompetent, irrelevant, immaterial, no foundation laid—contract for members is contained in every certificate, and articles and by-laws of the association.

Mr. DILLON: You may answer?

A. I was assured by him that the trust fund—guaranty trust fund would protect those holding certificates who paid their dues—paid their assessments regularly and promptly—that they would be entirely safe as to their insurance,—the guaranty trust fund, as it was called, and it would enable the association beyond any
402 question of doubt in our minds that we would receive the amount of our insurance, and that our—our assessments would not be enlarged in consequence of the accumulation of these—that is, they would be protected from increase by this trust fund.

Q. Did he say that this would in any way reduce the assessments?

Mr. MITCHELL: Same objection.

A. Well, only he assured me as a probability that that would naturally, as with other insurance—a great many drop out and forfeit the amounts that they paid in, the fund would increase, and we would be benefitted by it, by that increase.

Q. What was represented to you was to be done with this fund in case that a member should lapse?

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial, no foundation laid.

A. This guaranty trust fund——

Mr. MITCHELL: You are getting these objections down in the record?

A. (Continuing:)—would be a reserve fund to be held and used exclusively for the benefit of the—of those who held the certificates.

Q. Was or was it not to be used to meet the assessments——

Mr. MITCHELL: Same objection.

Mr. DILLON (continuing:)—of the lapsed members?

403 Mr. MITCHELL: Same objection.

A. From this fund we were to be protected from, as I said before—from increased assessments. That is my understanding from him, and in a general way, from reading their reports—of the company—they always, or nearly always when sending me a notice of an assessment, would include some statements similar to those I have received more recently that would indicate great prosperity.

Mr. MITCHELL: I move that answer be stricken out as not responsive.

Mr. DILLON: Was there at any time any offer made—I will withdraw that question.

—. Do you know of any reorganization of the company that has taken place recently, that you have been informed——

Mr. MITCHELL: That is objected to as hearsay.

Mr. DILLON (continuing:)—by the agents or directly from the company itself?

Mr. MITCHELL: Same objection.

A. I have had notice of reorganization from the company and from its agents.

Q. Were you notified that—to attend any meeting where a reorganization was to be effected?

Mr. MITCHELL: Objected to as incompetent, irrelevant and immaterial.

404 A. I have not.

Mr. DILLON: What kind of reorganization has been effected according to the notice received from the company?

Mr. MITCHELL: Objected to as incompetent, irrelevant and immaterial and not the best evidence.

Mr. DILLON: Well, you may answer.

A. I have notice now in that the company has changed from the Bankers Life Association to the Minnesota Mutual Insurance Company—from the assessment plan, in a general way, to the old line plan of insurance. I believe that is the correct——

Q. Do you know whether or not the company is soliciting members under the assessment plan to become—change their certificate to the old line plan,—as you have indicated?

Mr. MITCHELL: Objected to for the same reason—incompetent, irrelevant and immaterial.

A. I can only answer that in regard to my own case.

Mr. DILLON: State your own case in regard to that solicitation.

A. I should think it was something like two years ago Mr. Kenna, who at that time had an office in the Marquette building, requested me to call upon him at his office. I did so, and he informed me

although I had some intimations of—perhaps in his letters,
405 I don't remember how—he told me they were changing into an old line company and I asked him what the conditions were to be and he said that he had expected some papers from the home office in St. Paul before that time, but they had not reached him and he could not give me such information as he desired to, but he would later, in the course of our conversation he intimated to me that the premium under the new organization——

Mr. MITCHELL: This is objected to as incompetent, irrelevant and immaterial—no foundation laid.

A. (Continuing:)—would increase, but just how, and—he could not tell me at the time——

Mr. DILLON: How many times were you solicitoed to change your policy?

A. He called on me at the Grand Trunk office—I was employed by the Grand Trunk railway; later, just how much later I do not remember, and I told him very briefly that I did not care to talk the matter over at all; if the change was going to increase the expense to me, I would decline to do anything about it.

Q. Did any other agent of the company solicit you

Mr. MITCHELL: Same objection.

A. Mr. Bradley called on me at my house, and I was not at home; that was last June, I think, and left a request with a member of my family that I should call on him at his office in the——

406 Mr. MITCHELL: That is objected to as hearsay.

A. (Continuing:)—in this building on the corner of Adams and and Clark street.

Mr. DILLON: The Merchants——

A. The Merchants Loan & Trust building, twelfth floor; I did so, and has some conversation with him.

Q. What did he do?

A. He urged me very strongly——

Mr. MITCHELL: Objected to as incompetent, irrelevant and immaterial.

A. (Continuing:)—to change—surrender my certificate and take a new—take a policy in the new organization.

Mr. DILLON: Did they offer to relinquish any future assessments?

A. It would obviate the payment of two assessments——

Mr. MITCHELL: Same objection.

Mr. DILLON: How many times did they make that offer?

Mr. MITCHELL: Same objection.

A. Oh, I saw him two or three times during the—day or two there—two or three days.

Q. I show you this instrument and state what it is?

A. This was a letter received by me from Mr. Bradley, general agent, as printed on the letter.

Mr. MITCHELL: I move that answer be stricken out.

Mr. DILLON: Of course the letter speaks for itself.

407 Q. You know he was the agent of the company?

A. I don't know as I could swear that I knew he was the agent, only in a *general sense, that* he had this—this is the letter itself—and he represented himself to be the agent, and had the reputation of being the agent of the company. In writing this letter, he asked me to keep an appointment——

Mr. MITCHELL: Wait a minute.

Mr. DILLON: That speaks for itself; all I want you to do is to identify the letter. We offer the letter in evidence.

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial, no foundation laid.

Said letter, so offered, was then and there admitted in evidence and marked Complainant's Exhibit "A."

Mr. DILLON: Did they ever say anything to you in regard that the assessment would be so exorbitant that you would not be able to keep that policy?

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial, no foundation laid, and hearsay.

Mr. DILLON: That is, the agent.

A. If I did not change—surrender my certificate and take a policy in the new organization, that my assessments would be largely increased.

408 Q. Did he indicate to what extent it would be increased?

Mr. MITCHELL: Same objection.

A. I think not definitely; but called my attention to a case that had occurred within his knowledge in some other organization where the increased assessment amounted to—defeated the—that the party could not carry his insurance further. It was too expensive.

Mr. DILLON: Did he intimate that your case would be such that you could not carry, or did he say, in your case, in this company, would be such that you could not carry your insurance?

Mr. MITCHELL: Same objection.

A. Well, we had a general conversation, and among other things, we were speaking of the probability of life in my case—if I should continue to live as my present appearance indicated, the assessment would be necessarily—become so enlarged or increased that my insurance would be valueless, or nearly so.

Mr. DILLON: You are acquainted with article 10 of the by-laws,

charter—of the by-laws and constitution of the company, called the charter?

A. I do not know as I could repeat it, but I have read them, and have a general understanding of them.

Q. You understand, do not you, you have testified that
409 you have paid a sum equal to your age into the guaranty trust fund and that the purpose of that guaranty trust fund was to meet the assessments of members defaulting in their—defaulting in the payment of their assessments; now article 10—I will use this in my question—states that this shall not be—"all amounts pledged to this company to secure payment of assessments occasioned by death of its members, shall be used only for that purpose," etc; it says, "This article shall never be amended or in any way at all changed without the consent of every member of this company to be given in writing, signed by him and filed with the company's secretary, and reciting in full the proposed amendment or change:" Did you ever give any written consent to the change of article 10 that was just read?

A. Never was asked to.

Mr. MITCHELL: It never has been changed either. What was that you are reading from?

Mr. DILLON: That was a copy of the bill.

Mr. MITCHELL: Will you indicate the paragraph that you read from?

Mr. DILLON: Yes, it was paragraph, 8th. paragraph—folio, about folio 15.

Mr. MITCHELL: Is that a copy of the original articles adopted in 1880—is it?

Mr. DILLON: That is article 10.

410 Mr. MITCHELL: Of the original articles?

Mr. DILLON: Yes sir.

Q. Did they ever offer any other scheme or plan to change this new policy by creating liens, changed to the old line plan?

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial, no foundation laid.

A. I received a letter from a Mr. Fish, purporting to be the agent of the company—the letter was from Cleveland, Ohio.

Mr. MITCHELL: I move that answer be stricken out as not the best evidence.

Mr. DILLON: Where is this letter? Have you got it in your possession?

A. I think that it is in your possession or in possession of the court.

Q. Yes, in possession of the court?

A. That is right, in the possession of the court at St. Paul.

Mr. DILLON: Under those circumstances, I want to be understood that I ask to introduce testimony in regard to the letter that is in court at St. Paul.

Q. You may state what that proposition was, if you know?

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial and not the best evidence.

411 A. I can not go on and state in detail—there was quite a considerable of it, but among other things, if I accepted the proposition there was to be a lien of something like $886, I think, upon my policy—the policy being $2,000, and there would be a lien of $886 against that, and if I understand it correctly, whatever the lien might be, I should have to pay interest on that at the rate of five per cent. per annum, payable annually.

Mr. DILLON: Were you ever told—let me see, you have already testified that they offered to—if you would change according to the other plan given by you a few minutes ago, that they would give you the assessments,—in other words, they would not require the two coming assessments?

A. That was last June.

Q. June, yes.

A. I think it was June.

Q. Did they ever tell you where that money was to come from to pay those assessments?

A. No.

Mr. MITCHELL: Objected to as incompetent, irrelevant and immaterial and hearsay.

A. Nothing was said in regard to where that money was to come from.

Mr. DILLON: That is all.

412 Cross examination by Mr. MITCHELL:

Q. Did you say—give the date on which you became a member of the company?

A. I did not name the date, but I think in May—in May, I think.

Q. Of what year?

A. 1887, I think.

Mr. MITCHELL: I have no cross-examination.

Mr. DILLON: That is all then, Mr. Capron. I am much obliged to you.

The WITNESS: Thank you; I can state the date for a certainty if necessary.

Mr. MITCHELL: Well, that is all right.

The WITNESS: I have my certificate in my pocket.

Mr. MITCHELL: You have your certificate with you?

A. Yes sir.

Q. Produce that; let us see it.

A. I am very delicate with this.

Q. I won't hurt it; I just want to see the form of it.

A. I won't let anybody look at it; am I correct about the date?

Q. Do you want to change your testimony then?
A. One year later; it appears to be 1886 on looking at the certificate.
Q. That is all.
413 The WITNESS: Sixteen years instead of fifteen. I have been talking of fifteen.

FREDERICK S. CAPRON.

Subscribed and sworn to before me, this 15th day of March, A. D. 1902.

[Seal of Morris Panush, Notary Public, Cook Co., Ills.]

MORRIS PANUSH,
Notary Public.

414 ESDRAS B. TRUBEY, a witness on behalf of the complainants herein, being first duly sworn by me as a witness to the above cause, previous to the commencement of his examination, to testify the truth as well on the part of the complainants as of the defendants, in relation to the matter in controversy between said complainants and defendants, so far as he should be interrogated, testified and deposed as follows:

Direct examination by Mr. DILLON:

Q. You may state your name?
A. My name is Esdras B. Trubey.
Q. Where do you reside?
A. I reside at 6320 Eggleston avenue, Chicago, Illinois.
Q. You are one of the complainants in this suit against the Minnesota Mutual Life Insurance Company *et al.?*
A. I am.
Q. You have filed an intervening complaint?
A. I did.
Q. You are a member in the—in this company, the Bankers Life Association, reorganized as the Minnesota Mutual Life Insurance Company?
A. I am.
Q. When did you become a member?
A. On about March 13th, 1893.
415 Q. Have you your policy there?
A. I have not it here, I can get it.
Q. Let me see.
A. I hold certificates, numbers 17,376–77–78.

Mr. DILLON: We introduce certificate number 17,376. I do not think it is necessary to introduce any more.
Mr. MITCHELL: Mark it what?
Mr. DILLON: Exhibit "B."
Said certificate number 17,376, so offered, was then and there admitted in evidence and marked Complainants' Exhibit "B."

Q. You have paid your assessments in due time, promptly up to date?

A. I have paid all assessments made against—on me,——

Q. Of every kind?

A. Of every kind.

Q. Did you have notice of any reorganization of the company from the time that you became a member, from its plan—or—reorganization from its plan at the time you became and was a member, any reorganization from that plan to any other? Have you had notice from the company as to that?

A. I have.

Q. What notice have you had in regard to any change in the plan?

Mr. MITCHELL: Wait. Was the notice in writing?

416 A. I will answer that in a minute.

Mr. DILLON: Have you had any oral notice?

A. Yes sir.

Q. From the company itself?

A. Yes sir.

Q. Well, speak of that.

A. If you want me to wait and see if I have the letter of that—I don't know.

Q. I was going to say if you had, we will introduce it now.

A. Yes, sir, I have had written notice, which I herewith produce in the form of a letter, dated April 26th, 1901.

Q. Do you know J. J. Kenna? Is this the one you produce?

A. Yes sir, I know him; that is, I have met with him several times in my office.

Q. You know he is an agent of the Minnesota Mutual Life Insurance Company?

A. I know he so represents himself to be—signs his name that way.

Mr. DILLON: We introduce this in evidence; mark it Exhibit "C."

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial, and no foundation laid.

Said letter so offered, was then and there admitted in evidence and marked Complainants' Exhibit "C."

417 Mr. DILLON: In your oral conversations with, or in your conversations with the company, or its agents—by the way, when did you have an oral conversation in regard to this change—have a conversation in regard to the change with any member of the company; state when and to whom?

A. A conversation in the fall of 1901, with the president of the company, Mr. Palmer.

Q. State what was said in regard to the reorganization, this change of plan by Mr. Palmer to you?

A. He said it was a matter he had been working on personally

for several years and had devoted a great deal of time and hard work, and with the assistance of several of the best insurance actuaries and experts in the country—had formulated the present plan, as reorganized, which he concluded was for the best interest of all the old members to accept, but that they could not force the old members to accept the same, that the only effect in their not doing so would be—their assessments would be very greatly increased, and that every inducement that was possible was thrown out for the old members to accept the new form of policy, which was on the old line plan.

Q. Did you have notice of this reorganization prior to the time it was reorganized?

A. I had not.

Q. Did you have any notice whatever that the reorganiza-
418 tion was to take place prior to the time it was done?

A. I had not.

Q. The conversation you had with Mr. Palmer was after the reorganization was effected?

A. It was.

Q. About what date was that, as near as you can remember?

A. It was the first part of October, in 1891, as I remember it.

Q. The original—has this—1901, you mean; you said 1901, did not you?

A. 1901.

Q. That is right. Has this reorganization in any way affected you?

Mr. MITCHELL: Objected to as called for a conclusion of the witness; incompetent, irrelevant and immaterial.

Mr. DILLON: Do you know whether or not the—that many of the old members ever become—taken this new plan?

A. I do, they have.

Q. Do you know of any other—do you know how many, according to the statements, or not?

Mr. MITCHELL: Objected to as hearsay.

Mr. DILLON: Or statements of any of the company?

Mr. MITCHELL: Objected to as hearsay.

A. The president of the company informed me in the conversations that I spoke of, that between seventy-five and eighty
419 per cent. of the membership had changed their policies to the new guaranteed option policy—changed their old certificates, I should say.

Mr. DILLON: Explain what this guaranteed option policy is, as given—as notified by the company to you?

Mr. MITCHELL: Objected to as incompetent, irrelevant and immaterial and no foundation laid, not the best evidence.

A. It purports to give insurance, not subject to increase of cost,

and with the capital upon which it is based, guaranteeing the payment of the policy in full.

Mr. DILLON: When was this guaranteed option policy that you speak of first issued?

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial, no foundation laid, and not the best evidence.

Q. When was that first issued by the company, if you know?

Mr. MITCHELL: Same objection.

A. I do not know definitely, but I think that I was solicited to change my assessment policy to one of that kind, in the year 1899.

Q. How is that?

A. Yes, in the year 1899; either the last part of 1899 or the first part of 1900. Now I have got it.

Q. How many times have you been solicited to take this guaranteed option policy, about how many times?

420 A. I cannot state definitely, perhaps between five and ten times.

Q. Who solicited you?

A. A representative named Gallagher, and another named Kenna, and the president of the company.

Q. Before this guaranteed option policy was issued and the time that you became a member, what plan was in existence then, if you have not already stated?

Mr. MITCHELL: Objected to as incompetent, immaterial, irrelevant, and not the best evidence.

Mr. DILLON: What plan did you operate under then?

Mr. MITCHELL: Same objection.

A. Why mutual coöperative plan insurance.

Q. Making assessments on losses occasioned?

A. Yes sir.

Q. What were your payments then?

Mr. MITCHELL: Objected to for the same reasons.

Mr. DILLON: What were your payments of assessments at that time?

A. Originally?

Q. Originally, before this guaranteed option policy was issued?

A. The cost then was $90 per annum, for the three certificates of membership.

Q. $2,000 each?

A. Including the annual expense element.

Q. Since the guaranteed option policy has been issued, has

421 your assessment been increased?

Mr. MITCHELL: Same objection.

A. It has.

Mr. DILLON: What have you been—to what amount?
A. About $27—about $28, I should say—about $28 per annum.
Q. Now, you state that you have been solicited—what inducements were offered to you by this agent, or agents of the company to change your policy from the old assessment plan to this guaranteed option policy plan?
A. I have been offered freedom from paying the quarterly assessments, and also as inducement, was offered the return of, or payment to me by credit on the new policy, the sum total that I paid into the guaranty trust fund.
Mr. MITCHELL: Was that offer made in writing?
A. It was.

Mr. MITCHELL: I move the answer be stricken out, as not the best evidence.

Mr. DILLON: Was it also made orally?
A. It was also made orally.
Q. I will show you this, and state what that is?
A. I recognize that as a letter received from the company

Mr. DILLON: We introduce that; mark that exhibit—Complainants' Exhibit "D."
422 Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial, no foundation laid.
Said letter, so offered, was then and there admitted in evidence, and marked Complainants' Exhibit "D."

Mr. DILLON: I will offer that also. Do you recognize that?
A. I recognize that as a letter received from the company—received by me from the company.

Mr. MITCHELL: Same objection to Exhibit "E."
Said letter, so offered, was admitted in evidence and marked Complainants' Exhibit "E."

Mr. DILLON: Did they ever offer you other inducements or any other—any other reasons for changing the policy?

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial and not the best evidence; no evidence here of who offered or how it was offered, orally or in writing, or anything else. I do not think that question is competent.

Mr. DILLON: Offered by the agents or the company—agents or officers.
A. Both the president of the company, as also the two representatives of which I have—whose names I have mentioned, stated the fact that unquestionably the assessments would increase until they would become a hardship to pay, giving as a reason for said increase that the younger members had been solicited by them and
423 changed their certificates to the new guaranteed option policy, thus leaving the older members in the—in the mutual or as-

sessment—under the mutual or assessment plan, and hence the rate of mortality would very rapidly increase.

Q. Did they ever send you—I show you this instrument; state what that is?

A. I recognize that as the letter received by me from the company.

Mr. DILLON: I put that in evidence.

Q. These letters were received about the dates——

Mr. MITCHELL: I would like to look at this and make an objection to it. Same objection, incompetent, irrelevant, and immaterial.

Said letter, so offered, was admitted in evidence and marked Complainants' Exhibit "F."

Mr. DILLON: These letters were received about the dates indicated on the letters?

A. They were—they were allowing reasonable time for transit through the mails.

Q. Was ever anything said to you, Mr. Trubey, in regard to the abandonment of the original plan with which they started, by the agents of the company?

A. Both the president of the company and the representatives named by me stated that most emphatically, no policies of the co-operative or mutual plan would be issued henceforth.

424 Q. Did they say they were soliciting members on that plan yet?

A. They were not.

Q. Did any—did you ever receive any letter indicating that they had gone out of business?

Mr. MITCHELL: Objected to as not the best evidence.

A. I have.

Mr. DILLON: Where is that letter? I just wanted in the evidence to refer—that is put in, marked Exhibit "C."

A. Yes, sir; I stated in exhibits——

Q. Then your answer to my question as to whether or not they ever told you that they had gone out of the assessment business, whether or not you ever received a letter, is answered in the affirmative, and the letter is where?

Mr. MITCHELL: Objected to as leading.

A. The letter is presented here and marked Exhibit "C."

Mr. DILLON: Yes, that is leading but I do not know how to get at it.

Q. In regard to—I will show you this letter.

A. I recognize this as a letter received by me from the company.

Mr. DILLON: I put that in evidence.

Mr. MITCHELL: I have no objection to that.

Said letter, so offered, was admitted in evidence and marked Complainant's Exhibit "G."

425 Mr. DILLON: Did you in any way ever consent to change from this assessment plan to the guaranteed option plan?

A. I did not.

Q. The old line plan?

A. (No, sir.)

Q. You understand what article 10 is of the by-laws and constitution?

A. I do.

Q. Have you ever consented to any change in article 10 in any way?

A. I have not.

Q. In writing or otherwise?—When you paid this guaranty trust fund—this guaranty deposit, what representations were made to you in regard to the use of that?

Mr. MITCHELL: Objected to as incompetent, irrelevant, immaterial, no foundation laid.

Mr. DILLON: Under what understanding did you—that is, in regard to the use of that trust fund, under what understanding did you pay that to the company, or did you give it to the company?

Mr. MITCHELL: Same objection.

A. I paid it to the company in pursuance of the article of the corporation, or by-laws with reference to the same, that it was to be used for the payment of assessments, and to thus obviate the increase of cost of insurance on my certificates.

Q. Under what conditions or contingencies?

426 A. In the event of the lapse of my policy, or in the event that the policies should lapse.

Q. Under such contingency then this fund should be used to protect other members?

A. Yes, sir.

Q. And thereby prevent the increase of assessments. Do you know whether that has ever been done—whether these members have lapsed by direct evidence from the company, or otherwise?

Mr. MITCHELL: Same objection.

A. From my own personal knowledge I say no.

Mr. DILLON: You do not know whether that is——

Mr. MITCHELL: Same objection.

Mr. DILLON: You are informed and believe differently, is that right?

Mr. MITCHELL: Same objection; it is hearsay also.

A. I repeat by my own personal knowledge I do not know the president of the company—and the representatives of the company, as stated by me, said it had not been used that way.

Mr. DILLON: Were you informed as to whether money was—how the money was obtained to pay agents who solicited you and

others to become members under this new plan also—were you ever informed as to that?

Mr. MITCHELL: Objected to as hearsay.

A. I never was.

Mr. DILLON: Let me ask you to explain this proposition
427 that they make to change your policy by giving your assessments; what were they to give you? What credits were they to allow? Explain that?

Mr. MITCHELL: Objected to as incompetent, immaterial, irrelevant, not the best evidence.

Mr. DILLON: First explain by the agents to you.

Mr. MITCHELL: Same objection.

Mr. DILLON: Where were these credits to come from?

Mr. MITCHELL: Same objection.

A. I explained, the credits as explained were to come from the guaranty trust fund, and the credits to be received was the full amount that I had paid into the same, namely $120, and that might—the cost of my insurance under the new guaranteed option policy plan, was to be based upon my age at entrance, as a member of the association, and not upon the present date.

Mr. DILLON: Did they make any proposition to you, thereby creating a lien on your policy?

Mr. MITCHELL: Same objection.

A. Yes.

Mr. DILLON: State what that was.

Mr. MITCHELL: Same objection.

A. They proposed to take a lien note upon my policy, the
428 amount of which I disremember, but it was an off-set for the difference in my present age and the then age at which I joined the association.

Mr. DILLON: The plan, according to your statement just now, was that they would charge you according to your—now according to your age at the time you entered?

A. Yes sir.

Q. And what was this lien for? I would like to have you explain.

Mr. MITCHELL: Same objection.

A. The difference between the cost of insurance at my present age and at the age at which I joined the association.

Mr. DILLON: Had you paid according to the old line rates at the time you joined?

A. At the time I joined, yes sir.

Mr. DILLON: I think that is all.

Adjourned by stipulation until 2 o'clock p. m., March 11th, A. D. 1902.

429 2 O'CLOCK P. M., *March 11th, A. D.* 1902

Parties met pursuant to adjournment; present, same as before.

Cross-examination.

By Mr. MITCHELL:

Q. Mr. Trubey, did I understand you to say that Mr. Palmer told you that no part of the guaranty trust fund had ever been used to pay any death losses?

A. Previous to the reorganization, yes sir.

Q. Previous to the reorganization?

A. Yes sir.

Q. In August 5th., 1901, that is the date the company was reorganized?

A. No sir, I did not say so, for I do not know that he mentioned the date.

Q. When did this conversation take place with him?

A. Well, I disremember the date, but it was the forepart of October.

Q. 1901?

A. 1901.

Q. And he told you then, up to that time he had never used any portion of this guaranty trust fund to pay death losses, did he?

A. No, I did not say that. I said that he said, previous to the reorganization, that no part of the guaranty fund had been used to pay death losses.

Q. Previous to the reorganization, in August, 1901, is that what you mean?

A. That is what I mean, but I do not know when the
430 reorganization took place, as he referred to.

Q. You also stated that he told you that in making these transfers the agents and officers of the company had solicited the younger members to transfer and leave the old men in the assessment class. Do you want to be understood as testifying to that?

A. I mean to say that—not that they made them entire, exclusive—but that the young members did upon solicitation, change, while the old members did not, as a rule.

Q. Well, you do not want to be understood as quoting Mr. Palmer to the effect that the company was using any greater effort on the younger members than they were on the old, do you?

A. No sir, I did not say so, neither do I say so now.

Q. I simply want to get that clear in the record. I understood your statement was, Mr. Palmer told you they had been shifting the younger members, and shifting the younger members at the expense of the old.

A. Not to the exclusion of the older portion.

Q. Did Mr. Palmer tell you what the average age of the assessment members was, at the present time?

A. Yes sir, he did, but I do not remember it.

Q. Is it not true that he told you at that time that the average
431 age of the *average age of the* assessment members was substantially the same as it had been three or four years prior?

A. He did not, but it was very much increased, greatly augmented.

Q. That is not so, but well——

A. Well, no difference whether it is so or not, but he told me so.

Q. Did you go up to St. Paul for the purpose of seeing Mr. Palmer?

A. I did not.

Q. In October.

Mr. DILLON: I object to that, as being immaterial.

Mr. MITCHELL: It is true, is it not, that at the time you went to Mr. Palmer's office, your assessment certificate was in default—all three of them, for non payment?

Mr. DILLON: I object to that, as being not cross examination, and not the best evidence.

Mr. MITCHELL: Go ahead; answer the question.

A. Yes sir, it is true, that the expense—assessment on my policies were past due and unpaid.

Q. And at the time of that interview with Mr. Palmer, the time of this conversation with him in regard to the affairs of the company, that you have testified about, you applied for reinstatement in the company then, did not you?

A. Yes, sir, I offered to, and did pay my dues.

432 Q. You paid up your back dues and was reinstated in the company at your own request?

A. Yes sir, I also told him I did not receive a notice about expense assessment, neither did I.

Mr. DILLON: Same objection to all these questions.

A. And I was told by a member in Minneapolis that the same was due.

Mr. MITCHELL: What is your business, Mr. Trubey?

A. I represent, as secretary, the Continental Adjustment Company, organized for the purpose of settling and adjusting personal injury claims against persons, corporations and companies.

Q. Your offices are here, at 1508 Masonic temple?

A. Yes sir.

Q. And the offices of Messrs. Dillon & Goetz, your attorneys, are at 1510, are not they?

A. Yes sir.

Mr. DILLON: I object to that as immaterial.

Mr. MITCHELL: At the time you went to St. Paul and had this talk with Mr. Palmer, and he told you what the company had been doing, you know that this suit was about to be commenced, did not you?

Mr. DILLON: I object to that as being immaterial and not cross examination.

A. I knew it was contemplated.

433 Mr. MITCHELL: Did not you know that the bill of complaint had been already prepared at the time you were in Mr. Palmer's office?

Mr. DILLON: Same objection, not being——

A. Yes sir, and was asked to join, and refused for the reason I did not believe at the time the company was in such an absolutely bad condition as I subsequently found out it was.

Mr. MITCHELL: Did you see Mr. Byers on that trip to St. Paul?

Mr. DILLON: Objected to, not being cross examination, and immaterial:

A. I did.
Q. Did you see him before you went to Mr. Palmer's office?
A. I did.
Q. Did you take the bill of complaint in this case to Mr. Byers?
A. I did not.

Mr. DILLON: All objected to on the same point, same reason.

Mr. MITCHELL: Did Mr. Byers show you the bill of complaint in Minneapolis when you called on him?

Mr. DILLON: Same objection.

A. Well, I am not certain whether he did or not; at any rate he told me of it, and of its contents.

434 Q. Did not you see a copy of the bill here in your attorneys' office before you went to St. Paul?

Mr. DILLON: Objected to, being immaterial and not cross-examination.

A. Yes sir.
Mr. MITCHELL: Did you read it over, or any portion of it?
A. Yes sir.
Q. Read it all over, did not you, substantially all of it?
A. I could not say that, I could not say that I did.
Q. Well, you knew when you went to St. Paul this bill of complaint had been drawn in this connection, you had seen the bill, and you knew substantially what was in it, and you knew that the suit was about to be commenced, did not you?

Mr. DILLON: Same objection.

A. I cannot say that I saw the bill, however I say portions of it, and knew that the bill had been drawn and knew that the suit was to be commenced, and as before stated was importuned to become the complaining witness, or compla inant, I should say, but I refused.

Mr. MITCHELL: Did you go to St. Paul for the purpose of being reinstated in this company?

A. I did not.

Q. And for no other purpose?

A. I did not.

Q. What business had you there aside from being reinstated in the company?

A. I had personal business, paying debts.

435 Q. Anything with anybody except Mr. Byers?

A. Yes sir.

Q. When you applied for reinstatement in this company then and had this conversation with Mr. Palmer, you knew at that time everything that—the fact that this company had been reorganized, and transferred from the old line—old assessment plan to the new plan—you knew that, did not you?

Mr. DILLON: Same objection, not being cross examination and immaterial.

A. I knew—I knew the company was reorganized.

Mr. MITCHELL: You knew that the company were transferring the members from one plan to the other, did not you?

A. Yes sir.

Q. These propositions for transferring that you have testified to, were all made to you prior to that time, were they not?

A. Yes sir.

Q. You did not tell Mr. Palmer anything about this suit being about to be commenced, did you?

A. Yes sir, spoke to him that—not about this particular suit, but I told him——

Q. That is what I mean.

A. I did not.

Q. Did not mention it?

436 A. Did not mention this particular matter.

Q. You had just been in Mr. Byers' office a short time before and talked with him about the suit?

A. Yes sir.

Mr. DILLON: Objected to as immaterial.

Mr. MITCHELL: Is it not true that you reinstated in this company for the purpose of putting yourself in a position to become a party-complainant in this suit?

A. No sir, it is not true.

Q. It is not?

A. No sir.

Q. What object did you have in being reinstated in this company if you expected the company to be wound up in the next few weeks?

Mr. DILLON: Objected, no proper foundation.

A. With the fond hope of getting a little something back of what I had paid.

Mr. MITCHELL: That is to say, in the form of a dividend in the insolvent company, is that the idea?

A. Yes sir.

Q. You reinstated then for the purpose of getting dividends in this receivership case?

Mr. DILLON: Objected to.

A. No sir, I beg pardon.

Mr. MITCHELL: How did you expect to get any money back then?

437 A. That if the company was in the bad—insolvent condition that was pictured to me, that out of this guaranty fund, guaranty trust fund, there would be a proportion, doubtless, paid the persistent policy holders in the old company, as first organized.

Q. Well, you reinstated, not for the purpose of carrying on your insurance, but for the purpose of putting yourself in a position to get a share of the assets of the company, in a division in this suit, did not you?

A. If, forsooth the court decreed the company insolvent, otherwise, if the company was found to be good, then I would gladly carry my policy.

Mr. DILLON: Objection; there is no reinstatement shown—using the word "reinstatement" without any ground for it being laid.

Mr. MITCHELL: Do you know Mr. Edmund D. Carter?

Mr. DILLON: I object to that, immaterial.

A. I do.

Mr. DILLON: Objected to as being immaterial and not cross examination.

Mr. MITCHELL: How long have you known him?

Mr. DILLON: Same objection.

A. About six months.

Q. Where did you first meet him?

438 Mr. DILLON: Objected to as being immaterial, irrelevant and not cross examination.

A. In my office.

Mr. MITCHELL: Right here, 1508 Masonic temple.

A. Right here, 1508 Masonic temple.

Q. Have you seen him frequently since that time?

A. I have.

Mr. DILLON: Same objection; in addition there is no ground laid for the question.

Mr. MITCHELL: Have you had some talks with Mr. Carter about this suit?

Mr. DILLON: Same objection.

A. Yes frequent talks.

Mr. MITCHELL: Mr. Carter takes an interest in this case does he not?

Mr. DILLON: Same objection.

Mr. MITCHELL: He is interested in the case? He talked with you about it, has he not?

A. Yes sir, I can't say that he is interested, and especially in no financial way.

Q. Has Mr. Carter had an office in this building to your knowledge, or desk room?

Mr. DILLON: Same objection.

A. He has no desk room to my knowledge.

439 Mr. MITCHELL: Has he been in the habit of occupying a seat or desk in this room or in the room of Messrs. Dillon & Goetz?

Mr. DILLON: Same objection, immaterial, not cross-examination.

A. He has never had any occupancy with me in this office.

Mr. MITCHELL: How about Dillon & Goetz?

A. And with reference to Dillon & Goetz, I do not know that he has a desk or any office room there whatever, although I have known that he holds out there.

Mr. MITCHELL: What do you mean by "holds out"?

A. Well, it is a place that he frequents.

Q. You have seen him in there frequently, have not you, during the last six months?

Mr. DILLON: Same objection.

A. Yes, sir; I have seen him in there frequently.

Mr. MITCHELL: Using a desk in that office?

A. I have never seen him using their desk, or any desk.

Q. What does he do, sit around against the wall somewheres? Does he appear to be transacting any business in there, Mr. Trubey?

Mr. DILLON: Same objection.

440 A. I have seen him reading in there, seen him telephoning and talked with him in there, and he was never sitting on the wall, but was sitting on a chair when he was sitting, and when standing he was on his feet.

Mr. MITCHELL: You know, Mr. Trubey, do not you, that Mr. Carter's business in the office of Dillon & Goetz has been in connection with this law suit, do not you?

Mr. DILLON: Objected to as being immaterial and irrelevant.

A. I do.

Mr. MITCHELL: You know, do not you, that he has occupied his

time in that office in work connected with this law suit, do not you?

A. I do not.

Mr. DILLON: Objected to.

Mr. MITCHELL: You had a talk with Mr. J. C. Iverson in Milwaukee not long ago, did not you, about this case?

Mr. DILLON: Objected to as being hearsay.

Mr. MITCHELL: And you had some talk about Mr. Carter at that time, with Mr. Iverson?

Mr. DILLON: Objected to as hearsay evidence.

A. I had.

Mr. MITCHELL: And you admitted to Mr. Iverson at that time did not you, that Mr. Carter worked with Dillon & Goetz in connection with this case?

Mr. DILLON: Objected to as immaterial and irrelevant.

441 A. I did not. And I say again I never knew nor neither do I know now that Mr. Carter is interested in this case.

Mr. MITCHELL: By "interested" do you mean having a financial interest in it, I suppose?

A. Yes sir, or as counsel.

Q. He is not an attorney, is he?

A. Not to my knowledge.

Q. Well, you have just admitted, Mr. Trubey, that Mr. Carter's business in Dillon & Goetz' office has been in connection with this law suit.

A. Yes sir, so far as I know, that is partially so. He pretends to work old line insurance and I have heard him talk. What I mean by "interested" is, I have heard him talk to Dillon & Goetz about it as he has also talked to me about it. In that way, I mean to say he was interested, but not in any other sense.

Q. Is it not true that this man Carter has furnished to you and your counsel considerable information on which this suit is based?

Mr. DILLON: Objected to as immaterial, irrelevant.

Mr. MITCHELL: Or alleged information.

Mr. DILLON: No proper foundation, not proper cross examination.

A. Yes sir.

442 Mr. MITCHELL: Is it not true that Carter has given to you and your counsel information, or alleged information in regard to the organization and general running of this company, that you have used in the commencement of this suit?

Mr. DILLON: Same objection.

A. Well, I don't know to what extent he furnished information

to the counsel in this case, but as with reference to myself I would answer yes sir.

Mr. MITCHELL: Have you paid Mr. Carter anything for his services to you in the prosecution of this suit?

A. I have not.

Mr. DILLON: Same objection.

Mr. MITCHELL: Have your counsel paid any with your knowledge?

Mr. DILLON: Same objection.

A. Not to my knowledge.

Mr. MITCHELL: Is it not true that you or your counsel in this case—your solicitors, have an understanding with Mr. Carter in case of your success in this suit, Mr. Carter is to be paid a substantial sum for his services?

Mr. DILLON: Objected to for the same reason.

A. No sir, not at all, neither directly nor indirectly.

Mr. MITCHELL: Indirectly—have you any agreement or understanding with your attorneys in this case, or either of them, that you are to receive out of the proceeds of this case any more in case of success than would be allowed you on your policies by the court.

443

Mr. DILLON: Objected to for the same reason.

A. No sir, not at all, neither directly or indirectly.

Mr. MITCHELL: You are putting up a $750 bond in this case then, for the sake of getting your money back on your policy, that is all, is it?

Mr. DILLON: Objected to.

A. No sir, as a matter of principle, that justice may be meted out, I am taking the part of complainant in this case which I obstinately refused to do, until Mr. Iverson withdrew without a justifiable reason or cause, from prosecuting the case, and rather than let it go by default and be dismissed I consented——

Mr. MITCHELL:

Q. To become a party?

A. To become a party.

Q. You went to Milwaukee to see Mr. Iverson about this very case, did not you?

A. I did. To find why it was that he wanted to let it drop, and I satisfied myself.

—. Did you go to St. Paul the other day, Mr. Trubey, for the purpose of serving these papers on me in this motion for a receiver *pendente lite?*

Mr. DILLON: Objected to for the same reason.

A. I did not.

444 Mr. MITCHELL: You happened to be there on other business, is that it?

A. Yes sir.

Q. Did you go and see Mr. Byers before you served these papers?

A. I did, yes sir.

Q. You have taken a pretty active part in the prosecution of this suit all the time? Have not you?

Mr. DILLON: Objected to.

A. Only since Mr. Iverson withdrew.

Mr. MITCHELL: You expect to put up a bond for $750 in this case in the next 10 days, do not you?

Mr. DILLON: Objected to as wholly immaterial and irrelevant.

A. I do.

Mr. MITCHELL: You expect to pay that bond out of your own pocket in case judgment be rendered against you?

Mr. DILLON: Objected to as irrelevant and immaterial.

A. I do.

Mr. MITCHELL: You do?

A. Yes sir.

Q. Have you any agreement or understanding with anybody that they are to share a portion of the responsibility on that bond?

A. I have not, neither directly or indirectly, save as Mr. Wright also appears on the bond, and I expect him to bear—to bear equally the burden that may fall upon us.

445 Q. I am speaking of this new bond that the court has ordered, yesterday.

A. Well, in so far as the court enjoins it upon me, I say yes.

Mr. DILLON: Objected to, no proper foundation, no evidence here that there is any new bond required.

Mr. MITCHELL: Did you ever see any of those circular letters that were sent out from the office of Messrs. Dillon & Goetz under the names of Iverson and Wright, to the policy holders of this company?

Mr. DILLON: Objected to as immaterial, irrelevant, no proper foundation laid, not proper cross examination.

A. Yes.

Mr. MITCHELL: You knew such letters were being issued, did you not?

A. Yes sir.

Mr. DILLON: Objected to for the same reason.

Mr. MITCHELL: You knew this man Carter was engaged in sending out these letters, did not you?

Mr. DILLON: Objected to as immaterial.

A. No sir.

Mr. MITCHELL: Did not you know that Carter was engaged in addressing envelopes and mailing those circular letters to members of this company?

A. No sir.

Mr. DILLON: Objected to for the same reason.

446 Mr. MITCHELL: Who did you suppose were sending these letters out from that office?

Mr. DILLON: Objected to.

A. I presume that Dillon & Goetz done so; they never consulted me nor did I know of them sending them out until they were sent. One of which I received by due course of mail.

Mr. MITCHELL: Your certificates are all dated the same day are not they, all issued——

A. They are.

Q. March 13th. 1893,—is that the date of all of them. Just refer to your exhibit there that you introduced.

A. Yes sir, that is the date of all of them.

Q. You were not a member of the company prior to that time?

A. No sir.

Q. You want me to understand then, Mr. Trubey, that you are prosecuting this suit in the interest of principle—the return of justice rather than any great personal interest that you have, is that right?

A. Yes sir, that is exactly the idea, sir—a matter of principle, and not for the great gain.

Q. Dollars and cents?

A. No sir.

Q. Messrs. Dillon & Goetz have been your attorneys for some time?

A. They never have been attorneys for me.

Q. Prior to this suit?

A. Yes sir.

447 Q. How long have you had your office in this building?

A. Since the building was built, about 1892 or 1893.

Q. How long have Messrs. Dillon & Goetz had their office here to your knowledge?

A. I do not know but I think for about a year, I could not say.

Mr. DILLON: It is immaterial—objected to.

Mr. MITCHELL: How long since you have seen Mr. Carter?

Mr. DILLON: Objected to as immaterial, irrelevant, no proper foundation, not cross examination.

A. Let us see, I—well, say three or four days.

Mr. MITCHELL: Where did you see him last?

A. In my office.

Q. Did you have any business with him then in connection with this application for a receiver made yesterday?

Mr. DILLON: Same objection.

A. No sir.
Mr. MITCHELL: Anything said about it?
A. Yes sir.

Mr. DILLON: Same objection.

A. He said he believed that the court would grant a receiver to save the extravagant use of the funds in the way of expenses.

Mr. DILLON: I move that be stricken out as hearsay evidence.

448 Mr. MITCHELL: Did you ever see a copy of these affidavits that were used by the defendants in this case on the application to require the plaintiff to give a bond?

Mr. DILLON: Objected to as being immaterial, no proper ground laid for it.

Mr. MITCHELL: Affidavits connected with Carter's attacks on the company.

Mr. DILLON: Not proper cross examination.

A. I do not think I ever did.
Mr. MITCHELL: You know what I mean, do you, what I am referring to?
A. Why, I presume I do.
Q. I want to be clear that you understood my question.
A. I shall ask what the affidavits were.
Q. They were a bundle of affidavits that were used by the defendants—insurance company, and the trustee, on motion to require the plaintiffs to put up this bond, for $750, which was heard a couple of months ago, a copy of which was served on your attorneys.

Mr. DILLON: Objected to as being immaterial, not proper cross examination.

A. I do not know as I did, for at that time I did not take any active interest in it, as I do now. I may have seen them, or I may have been told all about them too, but I do not recall it now.

449 Re-direct examination by Mr. DILLON:

Q. You paid your September and October assessments—the assessments that occurred during that time?
A. Yes sir.
Q. Did you—it was stated here on cross-examination that you paid an assessment towards the first part of October.
A. Yes sir.
Mr. MITCHELL: About the 10th., he said.
A. Yes sir.
A. I said between the first and tenth, I do not remember just what day it was.

Mr. MITCHELL: I guess, if it will help you any, the books of the company will show that was paid on the 10th, the date you had the interview with Mr Palmer.

Mr. DILLON: Had you had notice of that assessment from the company?

A. No sir.

Q. When did you hear of that assessment?

A. When in Minneapolis, in conversation with a man named Moore, who was also a member of the company.

Q. That is after you were over here to Minneapolis?

A. Yes sir.

Q. And at the same time you paid it, paid the assessment?

A. Yes sir, the same day.

Mr. MITCHELL: These were September annual dues; they were not assessments; no notice is required by the by-laws.

450 Mr. DILLON: Then, is it not—is it not a fact, Mr. Trubey, that you merely went in to pay these dues—that is all there was to it?

A. Yes sir.

Q. Did not Mr. Palmer say that you had lapsed?

A. No sir, he did not say I was lapsed—that I was late, and I told him I had just learned about it, that I did not receive a notice.

Q. Did he say that he reinstated you?

A. Well no, he said that was all right, and he called for me—he called a clerk to bring me a receipt, and which they did.

Q. Then he presented you with a receipt and you paid the money and took the regular receipt, is that right?

A. Yes sir, took the regular receipt; they changed the date of it from the first—they changed the date at any rate from the time when it should have been paid to the time it was paid.

Q. Nothing said by Mr. Palmer as to lapsing?

A. Nothing said by Mr. Palmer as to lapsing with the explanation I gave—I received no notice—Mr. Palmer said that sometimes happened—might have been a mistake of the clerk, mailing clerk, or something that they could not account for.

Q. You never was regarded as a lapsed member were you?

451 A. I do not presume so.

Q. That is, for anything that you know. Give your testimony again on soliciting of new members instead of the old, in regard to this point—was it not a fact that Mr. Palmer told you that more of the new members were being obtained, and successfully solicited by the agents than any other class—than the old members?

A. I do not understand your question.

Q. Is it not a fact that Mr. Palmer stated to you that the new members were being brought into the new plan by the agents?

A. Do you mean the young members?

Q. I mean the young member, yes. Those of younger age were being more successfully solicited by the agents than the old ones?

A. Yes sir, they were more readily transferred, but Mr. Palmer

did not tell me that the young members of the old plan were solicited to the exclusion of the old ones.

Mr. MITCHELL: I just want to be clear; I misunderstood your first statement if that is the case.

A. Well, he did not say that; he simply said that the young members did readily transfer.

Mr. DILLON: You never applied for reinstatement in that company, did you?

A. Not to my knowledge, not that I recollect.

452 Q. You merely paid that assessment—went there to pay that assessment?

A. Went there to pay that assessment, gave him my policy and he took the money and gave me my receipt.

Q. There was no objection in any manner from Mr. Palmer, that you heard?

A. There was no objection.

Recross-examination by Mr. MITCHELL:

Q. What is your residence address, Mr. Trubey?

A. 6320 Eggleston avenue, Chicago, Illinois.

Q. You know the difference between an assessment and annual dues, do not you, in this company?

A. Yes sir, I think I do.

Q. Your annual dues—you paid regularly, from year to year, have not you, on a specified date?

A. I could not state; I could not state definitely; I rather think I did, and always received a notice until this last year.

Q. At the time that you had this conversation with Mr. Palmer in October, and paid up your over-due annual dues, at that time you signed a health certificate, did not you?

A. I do not recall whether I did or not.

453 Re-re-direct examination by Mr. DILLON:

Q. You regarded these annual dues, and the rules were the same as other money that you paid to the company, did not you?

Mr. MITCHELL: That is objected to as incompetent, irrelevant and immaterial.

A. I certainly did.

Mr. DILLON: And what you have said in regard to assessments you mean the same as these annual dues—that you have said in your testimony—in regard to these special assessments paid October 10th., last, I believe, you have—you mean where you call that an assessment, you mean what it actually was—whether it was dues, or what it was?

A. Yes sir, in so far as keeping the policy in force was concerned, I should say that it was equivalent to any other assessment, and all of which assessments I had heretofore received notice about thirty days previous to the time when the same should be paid.

Q. You paid that at that time with the same motive and same intention that you paid those before and since?

Mr. MITCHELL: Objected to as leading, incompetent and irrelevant.

Mr. DILLON: I will change the question: You stated in
454 your cross examination on questions from Mr. Mitchell, that you—the reason that you paid at that time—now, was there anything different in your motive in paying that assessment than in paying any other assessment?

Mr. MITCHELL: Objected to as incompetent and immaterial.

A. There was not, on the one hand, and yet on the other, there was.

Mr. DILLON: You paid it to keep your policy in force, as you always had paid it to keep it in force?

Mr. MITCHELL: Objected to as leading.

A. Yes sir.

Mr. DILLON: Explain your motive then again for paying that October assessment, or that assessment of October 10th?

A. My motive on the one hand was protection for my children if the company was found to be good in having abandoned its original plan, and if financially solvent, that my policy would be paid; and if, on the contrary, if the company should be declared insolvent by the court, or if in either event, should be thrown in the hands of a receiver,—that I would get something back of what I had already paid, in my life time—get something back in my life time out of what I had already paid.

Q. Then you paid that *suct* the same—with the same intention and motive that you paid since then, did not you?

455 A. Yes sir.

Mr. MITCHELL: Objected to as leading.

Mr. DILLON: You did not have in mind a reinstatement at that time, did you?

Mr. MITCHELL: Objected to as leading.

Mr. DILLON: There was nothing about—nothing suggested to you by the company, agents, or anybody else, about being reinstated or paying that money in the way of being reinstated, was there?

A. Why no sir, I never saw an agent of the company with reference to it.

Mr. DILLON: That is all.

Re-re-cross examination by Mr. MITCHELL:

Q. You say you do not remember whether you signed a health certificate or not?

A. I do not.

Q. Do you want to be understood that you did not sign it?
A. No sir. If there was one presented, I signed it, because I was in good health at the time and could do so.
Q. What did you suppose a health certificate was to be signed for unless for purposes of reinstatement?
A. For the purpose of certifying to the fact that I was in good health.
Q. What did you want to certify to that fact for unless you were to be returned in good standing in the company?

456 Mr. DILLON: Objected to as being leading.

A. Because if the payment was not made—if the payment was not made at the time it should have been—the policy would necessarily stand forfeited.

Mr. DILLON: Objected to.

Mr. MITCHELL: You understood then at the time you made that payment that you were liable for forfeiture for delay in making this payment?

Mr. DILLON: Objection.

A. Yes sir.
Mr. MITCHELL: Is it not true that you were advised by your counsel that in order to have any standing in this law suit you would have to be reinstated?
A. It was not. For I had no counsel at that time, and took no counsel from any one and had no conversation with reference to it, except with this man Moore, who also holds an old policy in the company.
Q. Had not you been informed by Mr. Dillon or Mr. Goetz that in order to put yourself in a position where you would have good standing in this case and get your money back, you would have to be reinstated?

Mr. DILLON: Objected to as immaterial and not proper cross-examination.

A. No sir.
457 Mr. MITCHELL: You knew that any way, I suppose?

Mr. DILLON: Objected to, being immaterial.

A. Yes sir.
Mr. MITCHELL: You knew it any way?
A. Yes sir, and had no thought at the time of ever being a complainant in the case.
Q. You had thought though, in case the suit was succeeded in by those whose names appear as plaintiffs, to intervene and establish your claim, I suppose?

Mr. DILLON: Objected to, not proper cross examination, calling for a conclusion the witness is not competent to give.

A. If I could not get any protection for my family in the event of my death I wanted to get whatever I could out of it—in the event of a wind-up.

Mr. MITCHELL: I have no further cross examination.

Re-re-re-direct examination by Mr. DILLON:

Q. You knew, Mr. Trubey, and have always known, if you did not keep your assessments and dues paid, your policy would be lapsed; yet in the case of this assessment, you never recognized yourself, and the company did not to your knowledge, in any way, that you had lapsed?

Mr. MITCHELL: Objected to as leading and incompetent, irrelevant and immaterial.

458 A. No sir, not with the explanation that I gave, not having received the notice, and so stated to the president of the company, I presumed the payment was received from me just the same as though it had been paid in time, for the reason I was in good health at the time and as above stated,—and as already stated, I explained to the president that I had not received a notice, or it would have been paid.

Mr. DILLON: That is all.

Re-re-re-cross examination by Mr. MITCHELL:

Q. You knew that the bill of complaint was to be filed within a day or two, did not you, in this case?

Mr. DILLON: It is immaterial.

A. Yes sir.

Mr. MITCHELL: That is all.

Adjourned by stipulation, until 2 o'clock p. m. Wednesday, March 12th, A. D. 1902.

ESDRAS B. TRUBEY.

Subscribed and sworn to before me, this 15th day of March A. D. 1902.

[Seal of Morris Panush, Notary Public, Cook Co., Ills.]

MORRIS PANUSH,
Notary Public.

459 *Copy of Exhibit "A."*

CHICAGO, *June 28th*, 1901.

Mr. F. S. Capron, So. Evanston, Ills.

MY DEAR SIR: I have your favor of even date just at hand.

As stated you in our interview, I think you have everything to gain in making this change under the circumstances,—and that we may further discuss the matter with a view of arriving at a final decision, I will thank you to keep the appointment as made by yourself for tomorrow morning sometime between 10 and 11 o'clock.

The experience shows that the mortality in a class, when this class is not added, becomes very much in excess of the provision of any rate, and you are certainly doing yourself a great favor when you provide for a permanent rate for this insurance and remove the hazard of an assessment upon lives younger than yourself, but not so good constitutionally, and, in so doing become a member of a class where the average age is somewhere about the age of 44. I am incorporating the foregoing in this letter more particularly for the information of your family than for yourself, as we can discuss the same when you come down tomorrow, and, finally, as I stated

460 to you when you were here, if you desire to have your insurance accomplish the result that you intended it to accomplish, to wit, be an addition to your estate and wish to carry it for the least possible cost you should transfer it by all means.

I await your visit tomorrow.

Yours very truly, CHAUNCEY B BRADLEY.

461 *Copy of Complainants' Exhibit "B."*

The Bankers' Life Association of St. Paul, Minnesota.

Annual dues. $6.00. Mortuary assessments, $0.80.

This certifies that the Bankers Life Association of Minnesota, upon the written application of Esdras B. Trubey, of Minneapolis, in the State of Minnesota, and upon the statements and warranties therein contained, which application and the answers therein made are hereby made warranties and a part of this contract, has on this 13th day of March, A. D. 1893, admitted him to one full membership in said association, and in virtue thereof he shall participate in and enjoy all the benefits conferred by said association, so long as he shall perform the duties and obligations incident to such membership according to the articles of incorporation of such association.

The said association in consideration of said application and the answers therein contained and that said member has made the guaranty deposit and payments called for by said articles, hereby covenants and agrees that said association, after the death of said

member and within sixty days after due proof thereof furnished thereto will pay at the office thereof in St. Paul, in the State
462 of Minnesota, unto his wife, Lizzie J. Trubey, a sum of money equal to two per cent. of the guaranty trust fund then held by said corporation in pledge therefor, not exceeding however, the sum of two thousand dollars, on the express condition, however and provided that the statements, matters and answers made, stated and set forth in said application are all true in fact, and upon the express conditions and provided that said member shall have paid all the annual dues and mortuary assessments imposed upon him during his life pursuant to said articles, and provided that this certificate shall become null and void if death occurs from self destruction within two years from this date, said member being sane or insane, or if death shall have been caused by the hand of justice or in consequence of the violation of any law, and provided further, that no action shall be brought or sustained upon or under this certificate unless commenced within one year after the day of the death of said member.

In testimony whereof, said corporation has caused the names of its president and secretary to be signed and its corporate seal to be affixed.

[The Bankers Life Association of Minnesota, Corporate Seal.]

CORTLANDT M. TAYLOR, *President.*
DOUGLAS PUTNAM, *Secretary.*

463 *Copy of Complainants' Exhibit "C."*

ST. PAUL, MINN., *Aug.* 26, 1901.

Mr. Edras B. Trubey, Chicago, Ills.

DEAR SIR: Relative to the conversion of your post-mortem certificate, may I not ask you to appoint a time when you can be interviewed, as at this season of the year so many of our members are taking their summer outing.

Soliciting an immediate appointment,

Very truly yours, J. J. KENNA.

P. S.—You will note from the circular letter recently mailed, that the Bankers Life Association has passed out of existence, and that the Minnesota Mutual Life Insurance Company will re-insure the old assessment members, substituting an "old line" policy.

464 *Copy of Complainants' Exhibit "D."*

To the members:

In re to the transfer of your policy.

You will receive credit for your July payment and escape the September call, *by making application at once.* Give this and previ-

ous communications your careful consideration, and favor us with an early reply.

Yours truly, CLARENCE E. SECOR.

P. S.—The flow of applications this month is unusually large, owing to our having qualified in August as an "old line" company.

465 *Copy of Complainants' Exhibit "E."*

ST. PAUL, MINN., *Mar.* 13, 1901.

To the members:

It is gratifying to the management to be able to state that we are in a stronger financial position than ever before in the history of the company.

The Spectator of New York, under date of Feb. 28th, 1901, says: "The Bankers Life Association of St. Paul made a very handsome increase in assets during the last quarter of 1900, and closed the year with total cash assets aggregating $1,000,000. On September 1, last, the cash assets amounted to $921,877, so that in the three months more than $75,000 were added. As a result the company is stronger financially than ever before, and financial strength has always been characteristic of it. Its prospects for immediate and rapid growth were never brighter than at present, and its managers may be relied on to use their utmost endeavors to keep it in the front rank of progressive institutions. The bulk of this company's cash assets are invested in United States Government bonds, and it also has a large amount of other high class bonds. It is satisfactory to note that its ratio of assets to liabilities is greater now than at any time since the company's organization."

466 It is hoped that all the members will make the change during the month of March and thus escape the payment of the April assessment. Full instructions and all necessary papers to enable you to place your policy upon the proposed plan will be furnished on application to our Chicago representative, Mr. R. D. Gallagher, room 823, No. 218 La Salle St.

Respectfully, CLARENCE E. SECOR, *Manager.*

467 *Copy of Complainants' Exhibit "F."*

ST. PAUL, MINN., *Feb.* 27, 1901.

To the members:

We are transferring our membership to our new policy, under which we maintain a 4 % reserve, as rapidly as we can by personal solicitation. *In time the old contracts will be wiped out or so decreased that they will be of little importance, and the company will step forth with its business all on a scientific and safe basis.*

Full instructions and all necessary papers to enable you to place your policy upon the proposed plan, will be furnished by our Mr. R. D. Gallagher, in the near future. *Should you wish to communicate with him before he reaches your city, please address him at No. 21 Fire and Marine building, St. Paul, Minn.*

Thanking you in advance for any courtesies shown our representative on behalf of this office, I am,

Yours very truly, CLARENCE E. SECOR, *Manager.*

468 *Copy of Complainants' Exhibit "G."*

ST. PAUL, MINN., *Aug.* 15, 1901.

To the members of the Bankers Life Association of Minnesota:

It is with great satisfaction and pleasure that we are able to inform the members that at the annual meeting held August 5, 1901, insurance to an amount exceeding $9,000,000 was represented in person and by proxy; that the secretary's report disclosed a large growth in the assets, a decided increase in financial strength, and a most gratifying condition of company affairs in general, and was promptly adopted; and that articles of reincorporation as an *old line* company, with "The Minnesota Mutual Life Insurance Company" as its future name, were adopted by an almost unanimous vote, there being but one person who voted against the resolution.

At the close of the meeting one of the oldest of the mortuary assessment members offered the following resolution:

"Resolved that it is the sense of this meeting that the officers and trustees are entitled to the thanks of every member of the Bankers Life Association for their able, conscientious and faithful administration of the affairs relating to the management of the company."

469 The motion was seconded by several others of the mortuary assessment members, and was unanimously carried.

The Minnesota Mutual Life Insurance Company now goes before the world and into the insurance field as a full fledged old line company, stronger in point of assets to liabilities—including legal reserve—than any company west of Pennsylvania with one exception, and equipped with the latest and most attractive forms of policies, based upon the lowest of premium rates; and with a large number of agents in the field will at once commence to write its share of new business.

Although every member holding a mortuary assessment certificate has been given a fair opportunity to transfer to the stipulated premium plan, the management has concluded for a limited time to give the few members remaining on the mortuary assessment plan the privilege of exchanging their assessment certificates for either of the new forms of policies, based upon the same premium rates as other members have been given in the past. The probability of further increase in the mortuary assessments still continues, and for this and other reasons the trustees

and officers believe it for the best interests of the members and the company that transfers be made to the new plan in all cases where it is possible.

470 *However, the trustees and officers also desire to impress upon the minds of members who may find it impossible to transfer, and of those who are not disposed to do so but prefer to take the risk of increased assessments, that the rights of the members on the old plan will be fully protected, and that just so long as any member makes payment of assessments and annual dues in accordance with the terms of his contract, and continues his certificate in force, his beneficiary is certain of receiving payment of the full amount promised, upon his death.*

Assuring you it will afford the officers pleasure to answer all inquiries and furnish any information desired, I am,

Very respectfully yours,

TIMOTHY R. PALMER, *President.*

471 *Certificate.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Be it known, that I took the annexed deposition- of Frederick S. Capron and Esdras B. Trubey, pursuant to the annexed notice; that I was then and there a notary public in and for said county and State; that I exercised the power of that office in taking such depositions; that by virtue thereof, I was then and there authorized to administer an oath; that each witness, before testifying was duly sworn to testify the whole truth and nothing but the truth relative to the cause specified in the annexed notice; that the testimony of each witness was correctly read over to him by me before he signed the same; that the examination was conducted on behalf of the complainants by Walter S. Dillon, representing the firm of Dillon & Goetz; that the examination was conducted on behalf of the defendants by William D. Mitchell, representing the firm of How, Taylor & Mitchell.

Witness my hand and seal this 25th day of M'ch 1902.

[Seal of Morris Panush, Notary Public, Cook Co., Ills.]

MORRIS PANUSH.

Received March 27th 1902

HENRY D. LANG, *Clerk.*

Filed March 27th 1902.

HENRY D. LANG, *Clerk.*

472 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants, and ESDRAS B. Truby, Intervening Complainant,

versus

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. B. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

It is stipulated by and between the parties of the above entitled action:

That the testimony of Esdras B. Trubey, who resides in the city of Chicago, State of Illinois, and more than one hundred miles from the place of trial of said action, and whose testimony is wanted on behalf of complainants, may be taken by and before Morris Panush, a notary public in and for the county of Cook, in the State of Illinois, on Monday, the 16th day of June, 1902, at eleven o'clock in the forenoon of said day, at room 1508 Masonic temple, in the city of Chicago and State of Illinois, for use on the trial of said action.

DILLON AND GOETZ,
Solicitors for Complainants.
HOW, TAYLOR AND MITCHELL,
Solicitors for Defendants.

473 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants, and ESDRAS B. Trubey, Intervening Complainant,
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. B. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

The Testimony of Esdras B. Trubey, Taken on Behalf of the Complainants.

Present in behalf of the complainants, Dillon & Goetz, and present on behalf of the defendants, William D. Mitchell.

(Mr. DILLON:) Please state your name.

A. Esdras B. Trubey.

Q. You are one of the complainants in the case where The Minnesota Mutual Life Insurance Company is a defendant, now on hearing?

A. I am.

Q. Mr. Palmer testified to a certain conversation had with him, in which he stated something as follows: 'That he told me
474 that he allowed his policy to lapse for the reason that he had not paid the September dues; or, in other words, that he had not paid the annual dues in September, because he had heard some rumors of the company's bad financial condition, and he had upon further investigation heard it was bound to succeed.' Did you say anything to Mr. Palmer to be in any way construed into that meaning?

(Objected to by Mr. Mitchell as incompetent, irrelevant and immaterial.)

Q. Did you say this, or anything of this kind?

(Same objection.)

A. I did not.

Q. You may state that conversation and the circumstances leading up to it and surrounding it.

A. I was at Minneapolis at that time, and several days previous, on personal business, and met with a man named Mr. Moore, with whom I have been acquainted a long time, and knew that he was also a member of the company, and in conversation with him

learned that the time for paying the annual expense assessment was due and past, and he said to me he had received a notice therefor and had paid his, and I told him I had received no notice and had not paid mine, but that I would go over to St. Paul from Minneapolis and see about it. I did so, which I believe was on the tenth of October, as stated, although I am not absolutely certain as to the date. I called at the office of the company; did not see any of the officers except Mr. Palmer. I stepped into his room, and after a few remarks concerning St. Paul as a city and Chicago as a city, I
475 told him that I learned over in Minneapolis that there was an expense assessment just due, of which I had received no notice, and hence had not paid, and I called to see about it. He sent for one of the clerks, and looked the matter up, and the clerk brought the notice, or rather the receipt, I should say, which had been returned from Chicago unpaid, the amount of which I disremember. However, it was small as compared to the amount of the mortuary assessment. I paid the same and took the receipt, and whether I signed any papers or not I cannot say.

We then continued our conversation with reference to the change of plan and policy of the company. He tried very hard to get me to consent to change my policy for one of the guaranteed option policies of the company under the new plan, but which I positively and in most unqualified terms refused to do. He said that he could not compel me to do it, but he thought I was very foolish not to, for the reason that they were soliciting all of the old members to change, and had secured a change of from seventy-five to eighty per cent., and as a very reasonable result the younger members were free to change, and which left the older members under the old plan, consequently the assessments would have to be raised accordingly and the death rate also increase- very rapidly. However, I asked him the question, and he said that they had solicited all members alike to change, that is they did not solicit the younger members to the exclusion of the older ones, but the younger
476 ones would change readily and the older ones would not. Hence, of the twenty or twenty-five per cent. that had not changed, they were all, as a rule, old members.

Q. That is what he told you, Mr. Trubey,—that last part?

A. That is what he told me.

Q. Now, Mr. Trubey, what did you say, if anything, to him with regard to your desire to change to this new plan, or your position in the way of opposing the change?

(Objected to as incompetent, irrelevant and immaterial.)

A. I told him I was positively opposed to any change whatever being made, and I would stick to the old plan, being a firm believer in it, as long as the company existed.

Q. At the time you went in there, had you already paid your mortuary assessment?

A. I had always paid my mortuary assessment so far as I know, and never lapsed.

Q. How long previous to October first had you paid the mortuary assessment?

A. Well, I am not certain, but as long as I was a member, which was perhaps ten or twelve years.

Q. Well I mean to say this, in other words; you say that you had no notice of this expense assessment, which was very small, you state, as compared with the mortuary assessment. Now, was there a mortuary assessment at the same time that there was an expense assessment?

A. No sir, there had not been any for two or three months.

477 Q. You had paid the last one previous to that?

A. I had.

Q. You had never been late in your payments before this?

(Objected to.)

A. I never had to the best of my knowledge.

Q. Did Mr. Palmer state to you at that time that it sometimes happened that members were late in paying their assessment, and he did not understand how it was that you did not receive your notice.

(Objected to as incompetent, irrelevant and immaterial.)

A. In answer to that will say, that Mr. Palmer said he did not see how it come I did not get my notice, and instructed the clerk to look up the books and see whether my address was proper.

Q. You attended the annual meeting where this reorganization of the Minnesota Mutual Life Insurance Company took place, did you Mr. Trubey?

A. I did. But did not remain until the meeting ended.

Q. It was stated by some witnesses on behalf of the defendants in their testimony that there was only one objector, one person who voted against the reorganization. You may state how you voted at that time.

A. I voted against it, if it was voted upon while I was there as I voted against every proposition with reference to changing the plan and policy of the company, and know of others that did also.

Q. Did you vote on every proposition there?

A. I voted on every proposition with reference to the reorganization that was presented, and I also voted against every proposition with reference to the reorganization that was presented, and also the acceptance of the secretary's report.

Corrected as written above.

478 Q. Is it a fact that you always opposed in every way this reorganization and change from the assessment certificate plan to the guaranteed option plan and the old line life plan?

A. Yes sir, I always opposed it, and everybody with whom I ever spoke opposed it.

(Mr. MITCHELL: I move that last be stricken out as incompetent.)

Q. You have had conversation with different members of this organization?

A. I have.

Q. What has been their attitude with reference to the reorganization?

(Objected to by Mr. Mitchell as incompetent, irrelevant and immaterial.)

A. All the members with whom I ever had conversation opposed the plan of changing it.

(Mr. DILLON:) That is all.

(Mr. MITCHELL:) You consulted with Mr. Byers, Mr. Trubey, before you went to Mr. Palmer's office that day in St. Paul, did you not?

(Objected to by Mr. Dillon as being immaterial, incompetent and irrelevant.)

A. No sir.

X Q. You testified to that fact on your former examination. Do you want to change that now?

A. No sir.

479 X Q. You went to see Mr. Byers in Minneapolis prior to calling on Mr. Palmer, did you not?

A. I was with Mr. Byers on the same day.

(Same objection.)

(Mr. MITCHELL:) No further cross-examination.

(Signed) ESDRAS B. TRUBEY.

Subscribed and sworn to before me this eighteenth day of June, A. D. 1902.

(Signed) MORRIS PANUSH, [SEAL.]
Notary Public.

480 STATE OF ILLINOIS, } ss:
County of Cook, }

Be it known that I took the annexed deposition of Esdras B. Trubey, pursuant to the annexed stipulation; that I was then and there a notary public in and for the said county and State; that I exercised the power of that office in taking such deposition, and by virtue thereof I was then and there authorized to administer an oath; that said witness, before testifying, was duly sworn to testify the whole truth and nothing but the truth relative to the cause specified in the annexed stipulation; that the testimony of said witness was correctly read over to him by me before he signed the same; that the examination was conducted on behalf of the

plaintiff by Walter S. Dillon; that the examination was conducted on behalf of the defendant by William D. Mitchell.

Witness my hand and seal this 18th day of June, 1902.

(Signed) MORRIS PANUSH, [SEAL.]
Notary Public.

481 STATE OF ILLINOIS, } ss:
County of Cook, }

This is to certify that the costs for taking the foregoing deposition and having the same reduced to writing by Miss Mary L. Scobey, stenographer, were seven dollars ($7.00) and that the same were paid by Esdras B. Trubey, one of the above named complainants.

Witness my hand and notarial seal this 18th day of June, A. D. 1902.

(Signed) MORRIS PANUSH, [SEAL.]
Notary Public.

Received June 23, 1902.

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

Filed June 23d, 1902.

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

482 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, Formerly the Bankers Life Association of Minnesota, Defendants.

The deposition of Edward A. Temple, taken on behalf of the complainants, before Henry H. Griffiths, a notary public of the State of Iowa, duly commissioned and qualified, pursuant to the stipulation hereto annexed, taken at his office, # 509 Equitable building, in the city of Des Moines and State of Iowa, commencing at 10 o'clock on the forenoon of Tuesday, the 17th day of June, A. D. 1902.

There was present on behalf of the complainants, John F. Byers of the city of Minneapolis, Minn., counsel; and there were present on behalf of the defendants above named, Wm. D. Mitchell, Esq., of the city of St. Paul, Minn., one of the solicitors for defendants,

and Mr. John R. Palmer, counsel for defendants. Whereupon the following proceedings were had and testimony given as follows, to wit:

EDWARD A. TEMPLE, being first duly sworn, testified as follows in answer to questions by Mr. Byers:

Q. What is your name?
A. Edward A. Temple.
Q. Your place of residence?
483 A. Des Moines, Iowa.
Q. In what business are you engaged?
A. Life insurance.
Q. You are the president of the Bankers Life Association of Des Moines?
A. Yes sir.
Q. How long have you been president of this company?
A. Since 1879.
Q. You have devoted all, or a large portion of your time to the management of that company?
A. All of it since 1884.
Q. What is the character of the Bankers Life Association of Des Moines, as an insurance company?
A. It is an assessment insurance company or life association.
Q. What do you mean by an assessment company?
A. I mean it is a company in which assessments are levied for procuring funds for the payment of losses and expenses.
Q. Based on the number of deaths occurring?
A. Yes sir, based on the death rate.
Q. What is the difference between an assessment insurance company, so called, and an old line or legal reserve insurance company?
A. A legal reserve company is a company in which they collect fixed premiums for life insurance, based upon the expected death rate. An assessment company is one in which the members are assessed for the payment of the losses of each, as they occur, based on the actual death rate.
484 Q. What, if any, is the advantage of assessment insurance?

(Objected to as incompetent, irrelevant and immaterial.)

A. It is supplied at a lower cost.
Q. When was the Bankers Life Association of Des Moines organized?
A. In 1879.
Q. Can you state in round numbers the total amount of insurance in force in the Bankers Life Association of Des Moines, in the years 1897 to 1901 inclusive?

(Objected to as incompetent, irrelevant and immaterial.)

A. I can supply that information.
Q. Can you state from memory, in round numbers?

A. No sir, I cannot, but I can get it from our office upstairs.

Q. Is there any objection to his stating this?

Mr. MITCHELL: None whatever, if you want it have it so.

Q. Then I would like to have Mr. Temple state the amount of insurance in force on December 31st of each year, from 1897 to 1901, inclusive.

A. I can get that.

Q. I would like to have it; also the gross amount of your assets for the same dates.

A. On December 31, 1897, insurance in force, $100,838,000. 1898, $115,000,000. 1899, $129,000,000. 1900, $143,000,000. 1901, $159,700,000.

Q. So the total amount of insurance in force has increased every year?

A. Yes sir.

Q. And now your assets.

485 Mr. MITCHELL: (Objected to as incompetent, irrelevant and immaterial.)

A. Assets, December 31st, 1897, $2,595,000. 1898, $3,000,000. 1899, $3,500,000. 1900, $4,000,000. 1901, $4,600,000.

Q. State briefly, Mr. Temple, the plan or scheme of insurance of the Bankers Life Association of Des Moines.

(Objected to as incompetent, irrelevant and immaterial.)

A. The plan of the Bankers Life Association is this. It is organized upon a guaranty fund as a basis. Each member upon entrance making a pledge of $1 for each year of his age, that he will stay with the company and pay the assessments. In the event of his death his pledge is returned with the benefit. In the event of lapse the guaranty is transferred to the surplus fund of the company. Calls are made quarterly for the amount of death losses paid since last call, or to be provided for since last call.

Q. Is there a membership fee?

A. Yes sir, of 50 cents for each year of the age. One-half of the guaranty fund is the membership fee.

Q. What is the percentage of assessment?

A. Well, it varies, according to the death rate.

Q. What is the assessment for each death?

A. We assess simply for money to pay the losses. We do not assess for each death. If we have $100,000 to pay, we make a levy upon the guaranty fund for that amount, and give the members notice to pay it.

Q. There is no fixed amount?

A. No sir. We have an expense assessment of 6 % from the organization of the company up to 1886, 6 % of the guaranty fund levied as an assessment. Since that time 10 % has been
486 levied. That is upon members admitted since that date.

Q. What is the payment to the member?

Mr. MITCHELL: Same objection to all this testimony.

A. Do you mean what is the policy? $2000 to each member, or in case he takes more than one certificate he is entitled to four or six thousand. We issue three certificates, according to the age of the applicant, and not more than three to any member.

Q. You have given the subject of assessment insurance considerable study, have you not, Mr. Temple?

A. Yes sir, naturally.

Q. Is it any value to a member of an assessment insurance company to have a large number of members in the company, provided, of course, that such members are selected with due care?

Objected to as incompetent, irrelevant and immaterial.

A. The larger the number the more economically the business is handled.

Q. Would it make any difference in the distribution of drath losses?

A. I cannot see that it does.

Q. You think, however, it would be an advantage to have at least a comparatively large membership?

A. It is better for the company.

Q. Is or is it not a part of the contract between the company and its management that the list of membership in the company shall be kept up?

Objected to as incompetent, irrelevant and immaterial.

A. There is no contract of that kind.

487 Q. What, if any, in your opinion, would be the effect upon an assessment company if its management should cease to solicit business on the assessment plan?

Objected to as incompetent, irrelevant and immaterial, and there is no foundation laid.

A. What is my opinion as to the effect? I think it would go down very rapidly.

Q. Would, in your opinion, the ceasing to solicit business effect the contract between the company and its members favorably or unfavorably?

Objected to as incompetent, irrelevant and immaterial, and as calling for a legal conclusion.

A. I think it would affect the members unfavorably.

Q. Were you in the year 1898, and are you now acquainted with the general conditions affecting assessment life insurance business in the States where your company is or was at that time authorized to do business?

A. I have no knowledge, except as to the Bankers Life Association of Des Moines.

Q. You have no knowledge of general business conditions?

A. As to other companies, no sir.

Q. In what States were you at that time and are you now authorized to do business?

A. In the Northwestern States.

Q. All of the Northwestern States?

A. Yes, pretty much all of them.

Q. Including Illinois, Indiana and Ohio?

A. Yes sir.

488 Q. And Michigan, Wisconsin, Minnesota and the two Dakotas?

A. Yes sir, Michigan, Wisconsin, Minnesota and part of South Dakota.

Q. Were the business conditions in these States such as to seriously hinder the Bankers Life Association of Des Moines in carrying on its business?

Objected to as incompetent, irrelevant and immaterial, and no foundation laid.

A. They were not.

Q. Were they such as to create any apparent necessity for the company's changing its plan of business?

Same objection.

A. We did not find any such necessity in connection with our company.

Q. Were they such, in your opinion, as to render it necessary for any company organized on substantially the same plan as the Bankers Life Association of Des Moines, to change its plan of business, or to interfere with the carrying out of its business?

Same objection.

A. I think that would depend upon circumstances connected with the company.

Q. With the company itself?

A. Yes sir.

Q. Suppose the company were efficiently managed, and was organized on the same plan, substantially, as the Bankers
489 Life Association, were the conditions such as to seriously impair its efficiency? And its ability to carry on its business?

Mr. MITCHELL: That is objected to as incompetent, irrelevant and immaterial, and no foundation laid.

A. I could only answer as to our own company.

Q. Assuming that the evidence in this case shows that the scheme of insurance adopted by the defendants, The Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association, and upon which all its members became such prior to January, 1899, was as follows:—That such member should pay into the company as many dollars as he was years of age, to be held as a guaranty fund, guaranty trust fund, to secure the payment of death losses, and should pay a membership fee of 50% of the amount of his payment into

the guaranty trust fund, and should pay 15% of the amount of such payment into the guaranty trust fund annually as annual dues for operating expenses, and should pay 2% of his payment as an assessment upon each death loss for each 2000 certificate held by him, the company agreeing to pay at his death to his beneficiary 2% of the total amount of the guaranty trust fund, not, however, exceeding $2000 on each membership certificate held by him, and not exceeding $6000 in any case, and such company had on December 31st, 1898, solicited and procured 12,090 memberships of $2000 each, and had insurance in force of $24,180,000, and had accumulated good assets to an amount exceeding $900,000, was there anything
490 that you know of in the general conditions affecting assessment insurance business then or prior to that time, which outside of the internal conditions of the company, would render it unlikely that such company should continue its business as such company indefinitely.

Objected to as incompetent, irrelevant and immaterial, and on the further ground that the hypothetic question is not properly framed, and on the further ground that it is not based on the evidence as shown in this cause; on the further ground that it is not a correct hypothesis, based upon the evidence already given in this case, and is not a complete or accurate statement of the conditions surrounding the defendant company.

Q. Do you know of any such conditions?

A. I do not know of any such conditions.

Mr. BYERS: That is all Mr. Temple.

491 Cross-examination by Mr. PALMER:

—. Just a question or two, Mr. Temple. Will you please explain a little more fully the method of levying mortality assessments in the Bankers Life Association of Des Moines?

A. Well, say we have a sum of $300,000 to pay in losses. We make a levy upon the amount of the guaranty fund as it stands upon our books, enough to make up the $300,000. We assess also twice a year for expenses.

Q. As I understand, you levy, we will say, $300,000 against the guaranty deposit, and that becomes a primary lien?

A. We base our assessment upon that deposit. We levy it upon the members, but based upon that deposit.

Q. How is it apportioned upon the several members?

A. According to their age at insurance.

Q. What is the percentage of assessment?

A. If we wanted to assess a man's guaranty fund, if it is $40 we would assess it $4, and if it is $30, we would assess $3, and so in the same proportion all along the line.

Q. So that if there is $300,000 necessary to be raised by the assessment, that amount would be apportioned between the several members, according to their deposit in the guaranty trust fund?

A. Yes sir.
Q. And there is no limit to the amount which can be assessed?
A. No sir. I will say, however, in explanation of that, that when we assess up to & including the tenth thousand, if it is the
492 eleventh we then charge the excess to the surplus fund.
Q. How much was there in the surplus fund on the 31st of December, 1901, approximately?
A. I can tell you very nearly. $1,800,000 was in our surplus fund on the first of January last.
Q. You were asked the question, if an ordinary assessment company, with comparatively large number of members, and large amount of insurance in force, should cease soliciting or writing new members, what would be the effect; and as I recall it, your answer was that it would very rapidly decline.
A. I think that was my answer, substantially.
Q. That was based on the assumption that the company ceased doing any soliciting of any kind of business, was it not?
A. Yes, ceased getting new business.
Q. It did not take into consideration any other efforts or acts or actions on the part of the company, to protect its members?

Mr. Byers: That question is objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.

Q. It is possible that some change of plan and further protection could be furnished these members by other efforts on the part of the company, is it not?

493 Objected to as incompetent, irrelevant and immaterial.

A. Of course, it is possible.
Q. That is all, Mr. Temple.

Mr. Byers: Mr. Temple, if such an assessment insurance company as has been described, should, in addition to ceasing soliciting business on the assessment plan, solicit its members to take insurance on another plan, and abandon their assessment insurance, would such action probably result detrimentally to the interests of the assessment members?

Objected to as incompetent, irrelevant and immaterial, and on the further ground that as a hypothetical question, it does not accurately state the conditions surrounding defendant company, and is not based on the evidence in this cause.

A. I think it would.
Mr. Palmer: That is, assuming that the assessment members had any other security than the assessments which might be levied to cover the mortality, is it not?
A. That is right.
Q. If by means of transferring to a new plan the membership on the mortuary assessment plan should dwindle down to a very few.

494 Suppose it dwindled down to two, and there stood as security for payment of death claims, $600,000 of assessments, they would be well protected, would not they?

Objected to as incompetent, irrelevant and immaterial.

A. Yes, I think so.

Mr. BYERS: If the assessment members had only the assessments and the guaranty trust fund that has been spoken of as protection, and they were solicited to abandon the assessment plan, would not the action of the company still be probably detrimental to the assessment members?

Objected to as incompetent, irrelevant and immaterial, and on the ground that it is not a proper hypothetical question; and on the further ground that it is too indefinite as to the amount of the guaranty trust fund that is held as security and the members that are protected by it.

Mr. BYERS: You may abandon the question and the objection to it. That is all, Mr. Temple.

EDWARD A. TEMPLE.

Mr. Stilson and Mr. Cassidy, the other two witnesses named in the stipulation for taking testimony, were not called as witnesses.

495 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Complainants, and ESDRAS B. Trubey, Intervening Complainant,

vs.

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

It is stipulated by and between the parties to the above entitled action, that the testimony of Edward A. Temple, Arthur C. Stilson and Simon Casady, who reside in the county of Polk and State of Iowa and more than one hundred miles from the place of trial of the said action, and whose testimony is wanted in behalf of the complainants therein, may be taken on Tuesday the 17th day of June, 1902, by and before H. H. Griffiths, a notary public, at his office at room 706 Equitable bldg., in the city of Des Moines, in said Polk county and State of Iowa, at ten o'clock in the forenoon of said day, for use on the trial of such action. The taking of said testimony may be adjourned from day to day till completed.

It is further stipulated that the time limited for taking testimony in rebuttal in the order of said court hereinbefore made, be and hereby is extended to and including the 18th day of June, 1902, and said depositions shall be returned to said court on or before the 24th day of June, 1902.

JOHN F. BYERS,
Counsel for Complainants.
HOWE, TAYLOR & MITCHELL,
Solicitors for Defendants.

496 Subscribed in my presence and sworn to before me this 20th day of June, A. D. 1902.

HENRY H. GRIFFITHS,
[SEAL.] *Notary Public in and for Polk County, Iowa.*

STATE OF IOWA, } ss:
County of Polk, }

Be it known that I took the annexed deposition of Edward A. Temple, pursuant to the annexed stipulation, at my office, room 509 in the Equitable building in the city of Des Moines, county of Polk and State of Iowa, commencing at 10 o'clock a. m., on Tuesday, the 17th day of June, A. D., 1902; that I was then and there a notary public in and for said county and State; that I exercised the power of that office in taking such deposition; that by virtue thereof I was then and there authorized to administer an oath; that said witness before testifying, was duly sworn to testify the whole truth and nothing but the truth, relative to the cause specified in the annexed stipulation; that the testimony of said witness was reduced to writing on the typewriter by Miss Lois Rigby, by and under my direction, she being neither a party to nor interested in any way in the event of the said cause; that the testimony of said witness was correctly reduced to writing, and was correctly read over to him by me, before he signed the same; that the examination of said witness was conducted on behalf of the plaintiffs or complainants by John F. Byers, counsel for said complainants; that the examination was conducted on behalf of the defendants by W. D. Mitchell, of solicitors for defendants, and T. R. Palmer, their counsel; that there were present at said time and place the said counsel and solicitor for said several parties hereinbefore named; that certain changes
497 made in ink in said deposition were made by and are in the handwriting of said witness, and were made at the time the same was read over to him.

Witness my hand and notarial seal this 20th day of June, A. D. 1902.

HENRY H. GRIFFITHS,
[SEAL.] *Notary Public in and for Polk County, Iowa.*

Fees.

Henry H. Griffiths, taking and certifying deposition..... $11.00

Witness.

Edward A. Temple, attendance and mileage..... $1.35

Received June 23d, 1902.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

Filed June 23d, 1902.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

498 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL., Complainants,
vs.
MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, *et al.*, Defendants.

Additional certificate of Morris Panush, notary public, within and for the county of Cook, State of Illinois, as to the testimony of Esdras B. Trubey, taken before said notary, 1508 Masonic temple, city of Chicago, State of Illinois, on Monday, the 16th of June, 1902, at 11 o'clock in the forenoon.

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Morris Panush, do certify that I am a notary public duly commissioned and qualified in the county of Cook and State of Illinois, and am the same person before whom the testimony of Esdras B. Trubey, one of the complainants in the above entitled cause, was taken on behalf of the complainants, pursuant to stipulation, at room 1508 Masonic temple, city of Chicago, State of Illinois,
499 on Monday the 16th day of June, 1902, at eleven o'clock in the forenoon.

I do further certify that in response to the questions propounded by Mr. Dillon, solicitor for complainants, said ESDRAS B. TRUBEY testified as follows:

Q. You attended the annual meeting where this reorganization of the Minnesota Mutual Life Insurance Company took place, did you, Mr. Trubey?

A. I did.

Q. It was said by some witness on behalf of the defendants in their testimony that there was only one objector, one person who

voted against reorganization. You may state how you voted at that time.

A. I voted against it, and I know of other persons that did also.

Q. Did you vote on every proposition there?

A. I voted on every proposition with reference to reorganization, and I also voted against every proposition as to the reorganization and also the acceptance of the secretary's report.

That as above set forth the witness actually testified at the time of the taking of said deposition, and that after the taking of said deposition was closed, and the solicitor for defendant had departed, and after the testimony of the witness had been reduced to, writing and submitted to him, the said Esdras B. Trubey, himself added as corrections, before he signed his said testimony, so that the same reads as follows:

Q. You attended the annual meeting where this reorganiza-
500 tion of the Minnesota Mutual Life Insurance Company took place, did you, Mr. Trubey?

A. *I did, but did not remain until the meeting ended.*

Q. It was stated by some witness on behalf of the defendants in their testimony that there was only one objector, one person who votes against reorganization. You may state how you voted at that time.

A. I voted against it, *if it was voted upon while I was there, as I voted against every proposition with reference to changing the plan and policy of the company,* and know of others that did also.

Q. Did you vote on every proposition there?

A. I voted on every proposition with reference to reorganization *that was presented,* and I also voted against every proposition with reference to the reorganization *that was presented,* and also the acceptance of the secretary's report.

I do further certify that the words "but did not remain until the meeting ended," and the words "if it was voted upon while I was there, as I voted against every proposition with reference to changing the plan and policy of the company," and the words "that was presented, and also the repetition of the words "that was presented," were written in said deposition by the said witness Trubey as corrections and before he signed the same, and that said inserted words were not spoken or given by the said witness Trubey at the
501 time of said hearing in response to questions propounded to him.

I do further certify that this additional certificate is made for the purpose of showing the nature and character of the corrections or changes made by said witness Esdras B. Trubey,

MORRIS PANUSH,
[SEAL.] *Notary Public, Cook County, Illinois.*

Annexed to said certificate is an envelope addressed and marked as follows.

HENRY D. LANG, Esq.,
Clerk U. S. Circuit Court,
Federal Building,
St. Paul, Minn.

Registered Jun- 30 1902 Masonic Temple station, Chicago, Ill.

Additional certificate of Morris Panush, notary public, as to the deposition of E. B. Trubey, taken to be used on the trail of an action now pending in U. S. circuit court for the district of Minne-
502 sota, wherein J. C. Iversen *et al.* are complainants and The Minn. Mut. Life Ins. Co. *et al.* are defendants.

MORRIS PANUSH,
Masonic Temple, Chicago, Ill.

Received July 1st, 1902

HENRY D. LANG, *Clerk.*

Filed July 1st, 1902,

HENRY D. LANG, *Clerk.*

Postage stamps ten cent and two cent, duly cancelled with stamp of Chicago Ill., and envelope back-stamped, as follows:
St. Paul, Minn. registry div. Jul- 1 1902.

Deposition of Ednus B. Trubey for Complainants.

Received July 1st, 1902

HENRY D. LANG, *Clerk.*

Filed July 1st, 1902

HENRY D. LANG, *Clerk.*

503 In Circuit Court U. S. A., District of Minnesota.

IVERSEN & WRIGHT ET AL.
vs.
MINNESOTA MUTUAL LIFE INS. CO. ET AL.

Will the clerk please insert in the complainants' record in equity the following files and papers, to wit:
Bill of complaint & exhibits.
Præcipe for chancery subpœna & order.
Amendments to bill of complaint
Replication
Affidavit of W. S. Dillon.
Affidavit and intervening complaint of E. B. Trubey.
Order making E. B. Trubey party complainant
Replication of E. B. Trubey

Application for receiver *pendente lite* with affidavits and exhibits, and order
Stipulation placing cause on calendar
Depositions of Wright
" " Trubey, Knox & Capron
Examiner's return
Depositions of Trubey
" " Temple

The above is meant to include all examiner's returns and
504 depositions taken in behalf of complainants

Very truly yours, JOHN F BYERS,
Counsel for Complainants.

(Endorsed:) Præcipe for complainants' record for hearing in equity. Filed July 23rd, 1902, Henry D. Lang, clerk.

504½ UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I, Henry D. Lang, clerk of the above named court, do hereby certify that I have carefully compared the foregoing paper writings, to wit:

Bill of complaint and exhibits,
Præcipe for chancery subpœna and order,
Amendments to bill of complaint,
Replication,
Affidavit of W. S. Dillon,
Affidavit and intervening complaint of E. B. Trubey,
Order making E. B. Trubey party complainant,
Replication of E. B. Trubey,
Application for receiver *pendente lite*, affidavits and exhibits, and order,
Stipulation placing cause on calendar,
Return of Examiner H. H. Horn of complainants' testimony and exhibits,
Depositions of Wright, Trubey, Knox, Capron, Trubey and Temple and exhibits attached thereto, and the
Præcipe for complainants' record, with the originals thereof, which are in my custody as such clerk, and that said paper writings are correct copies of such originals and of the whole thereof, in the cause therein named.

Witness my hand and the seal of said court, done at my office in Saint Paul, Minnesota, this 31st day of July, A. D. 1902.

HENRY D. LANG, *Clerk*,
[SEAL OF COURT.] By LOUISE B. TROTT, *Deputy*.

Thereafter and on the same day the defendants filed in the clerk's office of said court, their record for hearing in equity, in 2 volumes, which record is in the words and figures following, to wit:

505 (Endorsed :) Defendants' record vol. 1. Filed August 4th 1902. Henry D. Lang, clerk, by Louise B. Trott, deputy.

In the Circuit Court of the United States of America for the District of Minnesota, in the —— Term, A. D. 1901.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, Formerly the Bankers Life Association of Minnesota, Defendants.

The joint and several answer of the Minnesota Mutual Life Insurance Company and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, as trustees of the Minnesota Mutual Life Insurance Company, the defendant above named, to the bill of complaint of J. C. Iverson and Samuel Wright.

These defendants reserving to themselves all right of exception to the said bill of complaint, for the answer thereto say :—

1. That the defendant The Minnesota Mutual Life Insurance Company was organized on or about August 6th, 1880, as a life insurance company or association on the coöperative or assessment plan under the name "The Bankers' Association," under and pursuant to the laws of the State of Minnesota, and a true and correct copy of the original articles of association of said company
506 is hereto attached and marked "Exhibit A" and made a part hereof as though herein at length inserted.

2. That thereafter and on the 9th day of August, 1884, the said articles of association were duly and regularly amended so that the name of said association was changed to "The Bankers Life Association of Minnesota," and article XII of said original articles was duly and regularly amended so as to read as follows:

"Upon the death of each member of this company his family shall receive therefrom a sum equal to two per cent. of the then subsisting guaranty fund, not exceeding, however, two thousand dollars for each full membership, and one thousand dollars for each half membership held by the deceased, and in force at the time of his death, and not exceeding six thousand dollars in any case.

Such amounts shall be paid as soon as practicable and in all cases within sixty days after due proof of such death, and such payments shall be made to the family of the deceased only upon the receipt of such person or persons for them as the deceased shall have designated therefor in his original application or thereafter, under his

hand and duly acknowledged and filed with the secretary of the company."

We admit and say that on or about May 12th, 1894, article XI of the articles of said association was duly and regularly amended so as to read as set forth in folios 33, 34 and 35 of the bill of complaint.

In making said amendments all conditions precedent and
507 requirements of the articles and by-laws of said association were fully complied with.

3. That thereafter and on or about the 24th day of November 1890, the said association and its then officers, members and trustees did in all things accept the provisions of chapter 184 of the General Laws of the State of Minnesota for the Year 1885, entitled "An act to provide for the incorporation and regulation of coöperative or assessment life endowment and casualty insurance associations and societies," and did on or about said 24th day of November, 1890, duly and regularly re-incorporate under and pursuant to and in accordance with the provisions of said act of the legislature of the State of Minnesota, and as a part of said re-incorporation did duly and regularly adopt amended articles for the government of said association, a true and correct copy of which is hereto attached, marked "Exhibit B," and made a part hereof as though herein at length inserted, and said association, its officers, members and trustees did comply with all the conditions precedent and requirements of the act of the legislature of the State of Minnesota above referred to.

4. That on the 21st day of November, 1892, the said Bankers Life Association of Minnesota, and its officers, members and trustees, did re-incorporate under and pursuant to the laws of the State of Minnesota relating to life insurance companies on the coöperative or assessment plan, and more particularly under and pursuant to the said chapter 184 of the General Laws of the State of Min-
508 nesota for the Year 1885, above referred to, and did in all things comply with all the conditions precedent and requirements of the said laws of the State of Minnesota, and did duly and regularly adopt amended articles of incorporation for the government of said association a true and correct copy of which articles is hereto attached and marked "Exhibit C"? and made a part hereof as though herein at length inserted.

5. That thereafter and on the 24th day of December, 1898, the said Bankers Life Association and its trustees, officers and members, did duly and regularly re-incorporate under and pursuant to the provisions of the laws of the State of Minnesota relating to life insurance companies on the coöperative or assessment plan, and more particularly under and pursuant to the provisions of chapter 184 of the General Laws of the State of Minnesota for the Year 1885, and acts amendatory thereof and supplementary thereto, and said association and its officers and trustees did fully comply with all the conditions precedent and requirements of the said laws of the State of Minnesota, and did on said 24th day of December, 1898, duly

and regularly adopt amended articles and by-laws for the government of said incorporation, a true and correct copy of which articles and by-laws is hereto attached, marked "Exhibit D," and made a part hereof as though herein at length inserted.

6. That thereafter and on the 5th day of August, 1901, at a regular annual meeting of the members of said association, of which
509 meeting due notice had been given to all the members of said association in accordance with the articles and by-laws of said association and the laws of the State of Minnesota, the said Bankers Life Association of St. Paul, Minnesota, its officers, trustees and members, did proceed to and did reorganize and re-incorporate under and pursuant to the provisions of chapter 175 of the General Laws of the State of Minnesota for the Year 1895, as amended by chapter 143 of the General Laws of the State of Minnesota for the Year 1901, and did in all things comply with all the conditions precedent and requirements of said laws of the State of Minnesota, and did duly and regularly adopt amended articles for the government of said association, in which amended articles the name of said association was changed to "The Minnesota Mutual Life Insurance Company."

A true and correct copy of said articles *are* hereto attached marked "Exhibit E." and made a part hereof as though herein at length inserted. That thereafter and on the 9th day of August, 1901, and in accordance with said amended articles by-laws were duly and regularly adopted for the government of said Minnesota Mutual Life Insurance Company, a true and correct copy of which by-laws is hereto attached, marked "Exhibit F," and made a part hereof as though herein at length inserted.

We admit that a majority of those participating in said meeting were members who had formerly been the holders of mortuary assessment certificates in said company, but who at the time of
510 said meeting were the holders of guaranteed option policies in said company, and we admit that some of the persons so voting appeared in person and others by proxy; but we say that the holders of guaranteed option policies in said company were members thereof and entitled to vote as such to the same extent as any other member of said association.

We say that all articles of incorporation and re-incorporation as above set forth, and all amendments thereto as above set forth were duly executed and recorded and filed in the manner and in the places required by the laws of Minnesota.

Save as aforesaid we deny that the amendments set forth in the bill of complaint were ever made, and we deny that the said association or its trustees ever amended the articles of association for the purpose of injuring or defrauding any member thereof.

7. We admit that the plaintiff J. C. Iverson is a member of the Minnesota Mutual Life Insurance Company, formerly called the Bankers Life Association of Minnesota, and that he is the holder of one certificate of membership in said company and we are informed and believe that he is a resident and citizen of the State of Wiscon-

sin, We say that J. C. Iverson became a member of said association on June 12, 1893, and not before.

We are informed and believe that plaintiff Wright is a citizen and resident of the State of Wisconsin.

We deny that plaintiff Wright is a member of the defendant company. Said Wright became a member of the Bankers Life Association, now the Minnesota Mutual Life Insurance Com-
511 pany, on December 10, 1892, and not before, on which date a certificate of membership was issued to him. That on the 4th day of December, 1899, the trustees of defendant company, in accordance with the articles and by-laws, duly and regularly levied a mortuary assessment upon all the members of said association holding mortuary certificates therein, including said Wright, to pay death losses arising from the death of certain members of defendant company. That the amount of the assessment so levied upon said Wright was the sum of sixteen dollars and forty cents ($16.40). That it was provided by the articles and by-laws of defendant company that any member who failed to pay a mortuary assessment within thirty days from the date on which such assessment was levied, should cease to be a member of defendant company, and said Wright failed and neglected to pay said assessment, and has never paid or offered to pay the same or any part thereof, and by reason thereof ceased to be a member of defendant company on January 3, 1900, and has never since been or become a member thereof.

8. We admit that defendants Charles H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, J. F. R. Foss, Kenneth Clark and Albert H. Lindeke are citizens and residents of the State of Minnesota, and we say that each of said defendants is a duly elected and qualified trustee of said Minnesota Mutual Life Insurance Company.

9. We admit that "Exhibit B" attached to the bill of com-
512 plaint is substantially the form of certificate of membership issued by defendant company to plaintiffs.

We admit that since the guaranty trust fund of said association amounted to one hundred thousand dollars ($100,000.00) the amount of the deposits in the said fund of members dying in good standing, who became members subsequent to February 7, 1885, have not been paid to the respective beneficiaries of such deceased members, but said deposits have been retained as part of said guaranty trust fund, but we say that the deposits in the guaranty trust fund of members dying in good standing, who became members prior to February 7, 1885, have not been so retained but have been paid to their beneficiaries.

We admit that the guaranty trust fund amounted to one hundred thousand dollars ($100,000.00) at some time during the year 1885, and that the number of members who since said date have died in good standing is very large, and that the total deposits of such members in said fund amounts to a large sum.

We deny the allegations in paragraph numbered sixteenth in the bill of complaint.

10. We admit that the number of members of said association who have defaulted in the payment of their assessments since its organization is very large, and admit that the total amount of the deposits made to the said guaranty trust fund by said defaulting members is a very large sum, but we say that a considerable portion thereof has been paid out from time to time to meet death losses arising from the death of members in good standing.

We admit that on December 31, 1898, the deposits in the
513 guaranty trust fund by members who have defaulted in the payment of assessment and by members who have died in good standing would *ha*ve amounted, if still remaining in said fund, to not less than one hundred and forty-six thousand five hundred and ninety-three dollars and eight cents ($146,593.08), but we say that no portion thereof was wrongfully or fraudulently withheld from members or the beneficiaries of deceased members, and we say that a considerable portion thereof had previous to said December 31, 1898, been paid out to meet death losses arising from the death of members in good standing, and the amount of the deposits of deceased members who had defaulted in the payment of assessments actually in said guaranty trust fund on December 31, 1898, was the sum of $111,788.17 and no more.

11. We admit that that part of the guaranty trust fund representing the amount of the deposits therein of lapsed and deceased members had been carried or described on the books of defendant company as the mortuary reserve fund, but we say that said mortuary reserve fund was so called and described merely as a convenience in book-keeping and for the purpose at all times of informing officers and members of defendant company what portion of the guaranty trust fund was made up of the deposits of lapsed and deceased members. That said mortuary reserve fund has at all times been used and held as a part of the guaranty trust fund, and no part of said mortuary reserve fund has ever been held or used for any other purpose or object than that for which said guaranty trust fund was held and used.

514 12. We admit that between December 24, 1898, and August 5, 1901, the defendant company *and* issued a form of insurance contract or policy, described as a guaranteed option policy, and that Exhibit C attached to the bill of complaint is in substance the form of policy so issued.

We admit and say that between December 23, 1892, and April 24, 1900, in the form of application used by defendant company a clause was inserted like that contained in the application attached to Exhibit C of the bill of complaint.

We say that the only change in the articles of defendant company provided by said clause was to change the character of the securities in which the funds of the association might be invested, and said clause was inserted in said application for that purpose and no other.

We deny the allegations in folio 43 of the bill of complaint.

13. We deny the allegations of paragraph 22nd of the bill of

complaint, and say that no portion of the guaranty trust fund of said association has ever been used or applied to any purpose other than the payment of losses arising from the death of members holding assessment certificates in defendant company.

We deny the allegations in paragraphs twenty-third and twenty-fourth of the bill of complaint.

We admit that whenever the holder of a guaranteed option policy issued by defendant company died in good standing the amount provided in said policy has been paid to the beneficiaries
515 therein named.

We deny the allegations in paragraphs twenty-sixth and twenty-seventh of the bill of complaint.

We deny that the statements of assets and liabilities issued by defendant company are fraudently padded or inflated by inserting fictitious or valueless token of indebtedness or in any other way.

We deny the allegations in paragraphs numbered twenty-ninth, thirtieth and thirty-first of the bill of complaint.

We admit that since January 1, 1899, defendant company has made no effort to secure new members on the old mortuary assessment plan, and since said date has desisted from soliciting persons to become members of said association on the mortuary assessment plan, but we say that defendant company has at all times prior to August 5, 1901, solicited and obtained members on the guaranteed option policy plan.

We admit that since January 1, 1899, soliciting agents of defendant company have advised members holding mortuary assessment certificates of the wisdom of exchanging same for the guaranteed option policies, and that many such transfers have been so solicited and procured.

We admit that the reserve liability of defendant company fixed by the laws of the State of Minnesota on the guaranteed option policies of defendant company exceeds the sum of $1,023,116.67.

Save as herein admitted, qualified or otherwise denied
516 we deny every allegation in said bill of complaint and in the purported amendments thereto.

14. We say that the defendant company and its affairs have in all things been managed and conducted honestly and justly, and in accordance with the best interests of its members. That all amendments or changes in the articles and by-laws of said company were made with the growth of this defendant company, and as experience and developements suggested the advisability thereof for the life and stability of the defendant company, and to enable it to fulfill its obligations to members, and to promote justice and equity among them. That all the acts of the defendant company and its officers and trustees in the management and conduct of its affairs, and all changes and amendments in the articles and by-laws of defendant company since the date of its organization in 1880, have been from time to time fully approved, ratified and confirmed by the members of defendant company at the regular annual meetings of said members. That all amendments and changes in the

by-laws and articles of defendant company have been made public and have been brought to the knowledge and attention of the members of defendant company from time to time and as the same were made, and the members thereof have for many years acquiesced in and approved the same and the conduct of the defendant company in accordance with said amended articles and by-laws.

The defendant company has been carried on and conducted in accordance with the articles and by-laws herein set forth,
517 and both before and since December 24, 1898, many hundreds of persons have become members of defendant company under and pursuant to the amended by-laws and articles as herein set forth to have been in force from time to time, and defendant company has made contracts of insurance to the amount of many millions od dollars pursuant to the amended articles and by-laws as herein set forth in force prior to December 24, 1898, which contracts to the amount of many millions of dollars are still in force, and since December 24, 1898, has made contracts of insurance to the amount of many millions of dollars in accordance with and pursuant to the amended articles and by-laws herein set forth as having been adopted on December 24, 1898, which contracts to the amount of many millions of dollars are still in force; and since August 5, 1901, defendant company has issued policies and made contracts of insurance to the amount of *am*ny thousands of dollars under and pursuant to and in accordance with the amended articles and by-laws herein set forth to have been adopted on August 5, 1901, which contracts to the amount of many thousands of dollars are still in force.

The above plaintiffs and any other members of this defendant company who may ask to join in this suit as plaintiffs have, as we believe with full knowledge and information of the management and conduct of this association and its affairs, acquiesced in the same and permitted the defendant company to be managed in accordance with the said amended articles and by-laws, and the
518 said contracts of insurance to be made as aforesaid, and have never taken any proper steps to prevent the same, and have by their laches and delay in bringing this suit all right, if any they had, to object to the said amendments or the conduct of defendant company's business thereunder.

15. We say further that defendant company has in all things performed and is fully able and will continue to perform its contracts with its members, and the defendant company has never defaulted in the payment of any valid claim against it, and in the reorganization of the defendant company on August 5, 1901, as herein set forth, the respective rights and interests of all the members thereof have been fully guarded and preserved, and defendant company has provided for carrying out fully its contracts with its members, of whatever kind.

And now for our joint and several answer to the first interrogatory in the bill of complaint we say as follows:

Yes. $21,225.39, from time to time as deaths occurred from the

date of the organization of the association; and many large amounts have been used to pay death losses under mortuary assessment policies since August 8th, 1894.

And in answer to the second interrogatory in the bill of complaint we say as follows:

No.

And in answer to the third interrogatory in the bill of complaint we say as follows:

$83,413.38.

519 And in answer to the fourth interrogatory in the bill of complaint we say as follows:

$28,374.79.

And in answer to the fifth interrogatory in the bill of complaint we say as follows:

It has always kept individual accounts with each member showing all amounts paid by him to the company, the date of each payment, and the purpose for which paid. I am not aware that the law of Wisconsin or the insurance department of that State ever required the Bankers Life Association to keep "individual accounts with its members for their *pro rata* share of the assets of said association in excess of one assessment on all the members," and no report of said association,—sworn or otherwise,—to that department for 1898 or any other period contained or contains any statement that it did keep individual accounts as stated or assumed in the fifth interrogatory to which this is a response.

And in answer to the sixth interrogatory in the bill of complaint we say as follows:

The plaintiffs and all members had notice of and consented to the articles of incorporation, which from the organization of the association always provided that the board of trustees might from time to time amend the articles of incorporation in any lawful manner. The plaintiffs and all members of the association had thirty days' written notice of the annual meeting of members of the association held on the first Monday in August, 1899, and at this

520 meeting the action of the board of trustees in amending the articles of incorporation in December 1898, as in the foregoing answer set forth, and in issuing the guaranteed option policies referred to in the bill of complaint herein and in transferring members from the mortuary assessment policies to the guaranteed option policies, was ratified and confirmed. Of the members holding policies in this company at the time of the commencement of this action five-sixths had formally and in writing consented to the issuance of the guaranteed option policies and to the exchange by members of the mortuary assessment policies therefor. Long before the annual meetings of members held on the first Monday in August in the year 1900, and in the year 1901, the plaintiffs, and the members of the association in general, had been formally notified of the actions of the association in issuing the guaranteed option policies and in allowing members to exchange their mortuary assessment policies therefor, but no resolution disapproving the amend-

ments of the articles of incorporation or the issuance of guaranteed option policies was adopted or offered at either of those meetings. On the contrary at both of the meetings the actions of the officers and trustees was commended.

And in answer to the seventh interrogatory in the bill of complaint we say as follows:

By virtue of the statutes and the law of the State, the articles of incorporation, the by-laws and of the powers and authority vested in the board of trustees and officers.

521 And in answer to the eighth interrogatory in the bill of complaint we say as follows:

143 policies. Amount received $12,169.38.

And in answer to the ninth interrogatory in the bill of complaint we say as follows:

No.

And in answer to the tenth interrogatory in the bill of complaint we say as follows:

No difference represented. This interrogatory is based upon assumed facts which do not exist, and therefore cannot be otherwise answered.

And in answer to the eleventh interrogatory in the bill of complaint we say as follows:

No.

And the defendants pray that the complainants' bill may be dismissed, and that they, the defendants, may have decreed to them their reasonable costs in this behalf most wrongfully sustained.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY,
By F. R. PALMER. *President.*
[SEAL.] C. H. BIGELOW.
KENNETH CLARK.
MAURICE AUERBACH.
JAMES F. R. FOSS.
JOHN B. SANBORN.
C. LIVINGSTON.
ALBERT H. LINDEKE.

522 STATE OF MINNESOTA, } ss:
County of Ramsey, }

T. R. Palmer being duly sworn deposes and says: I am the president of the Minnesota Mutual Life Insurance Company above named. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my knowledge, and as much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

T. R. PALMER.

Subscribed and sworn to before me this 6th day of January, 1902.
J. W. DOOLITTLE, [SEAL.]
Notary Public, Ramsey County, Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Charles H. Bigelow being duly sworn deposes and says: I am one of the above named defendants. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my knowledge, and as much thereof as concerns the acts or deeds of any other persons or persons I believe to be true.
CHARLES H. BIGELOW.

Subscribed and sworn to before me this 6th day of January, 1902.
J. W. DOOLITTLE, [SEAL.]
Notary Public, Ramsey County, Minn.

523 STATE OF MINNESOTA, } ss:
County of Ramsey, }

John B. Sanborn being duly sworn deposes and says: I am one of the above named defendants. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my knowledge, and as much thereof as concerns the acts or deeds of any other person or persons I believe to be true.
JOHN B. SANBORN.

Subscribed and sworn to before me this 6th day of January, 1902.
J. W. DOOLITTLE, [SEAL.]
Notary Public, Ramsey County, Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Maurice Auerbach being duly sworn deposes and says: I am one of the above named defendants. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my knowledge, and as much thereof as concerns the acts or deeds of any other person or persons I believe to be true.
MAURICE AUERBACH.

Subscribed and sworn to before me this 6th day of January, 1902.
J. W. DOOLITTLE,
Notary Public, Ramsey County, Minn.

524 STATE OF MINNESOTA, } ss:
County of Ramsey, }

Crawford Livingston being duly sworn deposes and says: I am one of above named defendants. So much of the foregoing answer

as concerns my own acts and deeds is true to the best of my knowledge, and as much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

CRAWFORD LIVINGSTON.

Subscribed and sworn to before me this 6th day of January, 1902.

J. W. DOOLITTLE, [SEAL.]
Notary Public, Ramsey County, Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Kenneth Clark being duly sworn deposes and says: I am one of the above named defendants. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my knowledge, and as much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

KENNETH CLARK.

Subscribed and sworn to before me this 6th day of January, 1902.

J. W. DOOLITTLE, [SEAL.]
Notary Public, Ramsey County, Minn.

525 STATE OF MINNESOTA, } ss:
County of Ramsey, }

Albert H. Lindeke being duly sworn deposes and says: I am one of the above named defendants. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my knowledge, and as much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

ALBERT H. LINDEKE.

Subscribed and sworn to before me this 6th day of January, 1902.

J. W. DOOLITTLE, [SEAL.]
Notary Public, Ramsey County, Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

J. F. R. Foss being duly sworn deposes and says: I am one of the above named defendants. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my knowledge, and as much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

J. F. R. FOSS.

Subscribed and sworn to before me this 6th day of January, 1902.

J. W. DOOLITTLE, [SEAL.]
Notary Public, Ramsey County, Minn.

526 EXHIBIT A.

Articles of Incorporation of the Bankers' Association of Minnesota.

Know all men by these presents, that we, whose names are hereunto subscribed, have agreed to and do hereby associate ourselves and become incorporated under the laws of the State of Minnesota, and pursuant thereto have agreed to and do hereby adopt and sign the following articles of incorporation:

I.

The name of this corporation shall be "The Bankers' Association of Minnesota," and its local and principal place of business shall be Saint Paul, in said State.

II.

The general purpose of this corporation shall be to secure to its members employment, and to the families of its deceased members pecuniary assistance.

III.

The general plan of its operation shall be: First, to obtain and record the antecedents, circumstances and business qualifications of all its members; to register their application for employment, as well as all applications for employees; and to put the respect-
527 ive applicants in communication with each other, with recommendations according to such records. Second, to assess and collect from its members, and thereupon pay over to the families of its deceased members, stipulated sums of money, to be secured to them by the personal obligations of its members, guaranteed by sufficient pledges of money, and the investment thereof meanwhile in United States registered bonds.

IV.

Any male person not less than eighteen nor over sixty years of age, and being of good repute for business integrity, and the owner, officer or clerk of a bank, or recommended thereby, and approved by the medical director of this company, may be admitted to one membership therein upon his application therefor, and upon his depositing with or to the credit of this company the following sums of money: First, a sum equal to his age—counting to his nearest birthday)—in pledge to secure payment of all assessments against him occasioned by death of members during his life, and to be known as his guaranty deposit. Second, a sum equal to two per cent. of his guaranty deposit in full for the first assessment against him, occasioned by death of a member. Third, a membership fee equal to half his guaranty deposit. Fourth, his *pro rata* proportion

of the annual expense assessment for the unexpired portion of the company's current fiscal year.

No application shall be regarded until such deposits are made; and if the applicant be a minor, he must also furnish surety to the satisfaction of the company, that he will not thereafter dis-affirm his said acts.

528 Upon the rejection of any application, all the moneys so deposited (except the sum of three dollars to meet the expense of his medical examination) shall be returned to the applicant on demand.

V.

It shall be competent to admit persons to half membership in this company, and any member may hold as many as three memberships therein; but in all such cases his deposits and future assessments shall be proportionately diminished or increased.

Certificates of membership shall be issued to its members under the seal of the corporation, signed by the president, and countersigned by the secretary thereof, and expressing the number of memberships they hold respectively.

At any election of trustees each member shall be entitled to cast one vote for each full and half a vote for each half membership held by him.

VI.

Each member of this company shall and will pay thereunto on the fourth Monday of September in each year, an assessment not exceeding fifteen per cent. of his guaranty deposit, to be made for and on account of operating expenses, and to be known as his periodic assessment; and upon the death of each member, he shall and will also pay to said company, on demand therefor, an assessment not exceeding two per cent. of his guaranty deposit. The same to be by said company paid to the family of deceased

529 member, and to be known as his casual assessment. All assessments upon members of this company, whether periodic or casual, shall be proportioned among them *pro rata*, that is to say, in proportion to the amounts of their guaranty deposits respectively; and the same shall be payable at the depository where the member lodged his application for membership, or at the successor thereof. Provided, that any member may, in writing, signed by him, and filed with the company's secretary, designate where his assessments shall be payable.

VII.

A member of this corporation shall continue such only so long as he shall promptly and in good faith pay thereto his proportion of all the periodic and casual assessments thereof; and in case of default on his part in that behalf, all money paid by him or pledged to said company, shall and may, nevertheless, be used and applied to the purposes for which the same were so paid or pledged.

This corporation shall have no capital stock; and all membership fees and other contributions thereto (except assessments occasioned by death of its members) shall be used to defray its current expenses and to increase its efficiency; and the residue thereof, if any, shall be used to pay losses occasioned by death of its members.

VIII.

Any person having once been a member of this company
530 may be re-admitted thereto upon the same terms as other persons, if he apply therefor within ninety days from the termination of his membership, and pay all assessments made upon him to date of such application; but in such cases, if the board of trustees shall be satisfied, that such applicant's default was not wilful, and was occasioned by sickness or other misfortune, then he shall have credit upon his application for re-admittance for the amount of his original guaranty deposit or membership fee, or both as said board may direct.

IX.

It shall be the duty of the respective members of this company, as well as every officer and agent thereof, to promptly report to its board of trustees every infraction of these articles, as well as any breach of duty on part of any member, officer or agent thereof; also concerning the application of any ineligible or unworthy person for membership; and thereupon it shall be the duty of said board of trustees to investigate such charge, and to take adequate measures for the protection of all concerned.

X.

All amounts pledged to this company to secure payment of assessments occasioned by death of its members, shall be used only for that purpose, and meanwhile the same shall be and remain invested in United States registered bonds, and shall constitute and be known as "the guaranty trust fund." Such bonds shall be made
531 payable to this company; and shall be transferable or convertible only upon resolution of its board of trustees, and such board shall have the exclusive charge and control thereof.

All interest realized from such bonds shall meanwhile be used to defray the company's operating expenses.

This article shall never be amended, or in any way at all changed, without the consent of every member of this company, to be given in writing, signed by him, and filed with the company's secretary and reciting in full the proposed amendment or change.

XII.

All losses occasioned by the death of members shall be collected by this company from its members; or, in case of default on part of

any member, the amount of his assessment, on account of such loss, shall be paid out of his guaranty deposit.

Upon death of any member of this company, and due proof thereof, statements shall be prepared and verified by the secretary thereof, and be filed in each depository thereof, and setting forth, First, the name and residence of the deceased. Second, the date of his death. Third, the number of memberships held by him. Fourth, the names of the members whose assessments are payable at such depository, with the amount due from each on account of such loss; and notice thereof, with request to pay the same, shall be given to each member, either by said company or by its corresponding depository, and either personally or by mail; and if by mail, the mailing of such notice by any officer of said com-
532 pany, or by such depository, shall be a sufficient demand for the payment of such assessment, and the same shall be paid within thirty days after such demand.

XII.

Upon the death of each member of this company, his family shall receive therefrom, First, the whole amount pledged thereto by the deceased. Second, a sum equal to two per cent. of the then subsisting "guaranty trust fund," not exceeding, however, two thousand dollars for each full membership, one thousand dollars for each half membership, held by the deceased, and in force at the time of his death, and not exceeding six thousand dollars in any case.

Such amounts shall be paid as soon as practicable and in all cases within sixty days after due proof of such death, and such payments shall be made to the family of the deceased only upon the receipt of such person or persons for them as the deceased shall have designated therefor in his application or thereafter, under his hand and duly acknowledged and filed with the secretary of said company.

XIII.

The fiscal year of this company shall commence upon the first Monday of September in each year, and on or before the Monday following shall be prepared and filed with each depositary thereof a statement under the hand of the president and chairman of the board of trustees and verified by the secretary, and showing:
533 First, the number of memberships in force at the beginning of the current fiscal year. Second, the amount of "the guaranty trust fund" then on hand, either in money or bonds, and how much in each. Third, the amount of death losses sustained and then unpaid, if any. Fourth, the names of all members whose periodic assessments are payable at such depository, with the amount due from each; and such amounts shall be paid on or before the fourth Monday of September thereafter and without demand therefor.

XIV.

The officers of this company shall be a president, vice-president, secretary, treasurer, medical director, attorney and five trustees.

The first board of trustees are, by the incorporators of this company, hereby chosen, and shall be Bruno Beaupre, whose term of office shall be two years; William R. Merriam, whose term of office shall be four years; John B. Sanborn, whose term of office shall be six years; Maurice Auerbach, whose term of office shall be eight years; and Charles H. Bigelow, whose term of office shall be ten years, and each of whom shall continue in office from the first Monday of August, A. D. 1880, until his successor is duly elected or appointed and qualified, and shall reside at Saint Paul, in said State meanwhile; and permanent removal from said Saint Paul, by any trustee hereby appointed, or hereafter appointed or elected, shall operate as a formal resignation by him of such office.

All vacancies in said board, whether occasioned by death
534 or resignation, shall be filled by the remaining members of said board; but the trustees so appointed shall continue in office for the unexpired term of his predecessor.

There shall be elected by the members of this company, at the office thereof in said Saint Paul, on the first Monday of August A. D. 1882, and biennially thereafter, one trustee, which election shall be conducted and canvassed according to the by-laws of this company.

The other officers of this company shall be appointed by said board of trustees at the office of the company at said Saint Paul, on the first Saturday of August, A. D. 1880, and biennially thereafter. The officers so appointed shall continue in office until their successors are duly appointed and qualified respectively.

Such board of trustees shall hold regular meetings at the office of the company on the first Monday of each month, and shall have power, first, to adopt and provide a corporate seal foe said company, also to establish by-laws and make all rules and regulations deemed by them expedient for the management of the affairs of this company, in accordance with law and not incompatible with an honest purpose. Second, to appoint the other officers of this corporation, to fix their salaries, to define their respective provinces and duties, to suspend or remove any of them for cause, and to fill all vacancies occasioned thereby or by death. Third, to establish fiscal agents in any place, to be known as depositaries, and to define their powers and duties; and also to fix their compensation.
535 Fourth, to reduce the rate of assessments for death losses, as well as those for operating expenses in case the same prove greater than necessary to discharge the obligations of said company. Fifth, to amend these articles (except as herein otherwise provided,) and to generally direct, manage and control the business and concerns of this company.

In testimony whereof, we have hereunto set our respective hands

and seals this fourth day of August, in the year of our Lord one thousand eight hundred and eighty.

C. H. BIGELOW.	[SEAL.]
M. AUERBACH.	[SEAL.]
JOHN B. SANBORN.	[SEAL.]
WILLIAM R. MERRIAM.	[SEAL.]
BRUNO BEAUPRE.	[SEAL.]
W. P. WARNER.	[SEAL.]
A. G. ALCOTT.	[SEAL.]
RUSSELL R. DORR.	[SEAL.]

STATE OF MINNESOTA, }
Ramsey County. }

Be it known that on this 5th day of August, A. D. 1880, came personally before me Charles H. Bigelow, Maurice Auerbach, John B. Sanborn, William R. Merriam, and Bruno Beaupre, W. P. Warner, A. G. Alcott, Russell R. Dorr, to me well known to be the same persons who executed the foregoing articles of incor-
536 poration, and then and there they respectively duly acknowledged the same to be their act and deed.

In proof whereof, I have hereunto set my hand, and affixed my official seal the day and year first above written.

C. B. RICHMOND,
Notary Public, Ramsey County, Minnesota.

STATE OF MINNESOTA,
OFFICE OF SECRETARY OF STATE.

I hereby certify that the within instrument was filed for record in this office on the 6th day of August, 1880, at 10 o'clock a. m., and was duly recorded in Book E of Incorporations on pages 428 and 436 inclusive.

FRED VON BAUMBACH,
Secretary of State.

I, Russell R. Dorr, secretary of the Bankers' Association of Minnesota, do hereby certify that the foregoing is a true copy of the articles of incorporation of said association as filed for record in the office of the secretary of state and the register of deeds of Ramsey county.

RUSSELL R. DORR.

537 EXHIBIT B.

Resolved, That all laws of the State of Minnesota, applicable to this company, be and the same are hereby accepted and that without prejudice to any subsisting obligations of this company its original articles of association be and the same are hereby amended so as to read as follows, that is to say:

Know all men by these presents, that we, whose names are hereunto subscribed, have agreed to and do hereby associate ourselves and become incorporated under the laws of the State of Minnesota, and pursuant thereto have agreed to and do hereby adopt and sign the following articles of incorporation:

I.

The name of this corporation shall be "The Bankers' Life Association of Minnesota," and its location and principal place of business shall be at Saint Paul, in said State.

II.

The general purpose of this corporation shall be to secure benevolent and fraternal coöperation between its members, and to the families of its deceased members and other designated beneficiaries pecuniary assistance.

III.

The general plan of its operation shall be to assess and collect from its members (so long as they continue such) and thereupon pay over to the families of its deceased members or other
538 designated beneficiaries stipulated sums of money, to be secured to them by sufficient pledges of money which shall be kept invested meanwhile in United States registered bonds.

IV.

Any male person not less than eighteen nor over fifty-five years of age (counting to his nearest birthday) being of good repute for business integrity, and the owner, officer or clerk of a bank, or otherwise satisfactorily recommended and approved by the medical director of this company, may be admitted to one membership therein upon his application therefor and upon his depositing with or to the credit of this company the following sums of money: First, as many dollars as he is years of age (counting to his nearest birthday), in pledge to secure payment of all assessments occasioned by death of members, made against him during his life, and to be known as his guaranty deposit. Second a sum equal to two per cent. of his guaranty deposit, for the first assessment to be made against him, occasioned by the death of a member. Third, a membership fee equal to half his guaranty deposit. Fourth, his proportion of the annual expense assessment for the company's current fiscal year. Provided, however, that time for the making of said payments or any of them, may be granted to any applicant, subject to the approval thereof by the board of trustees; but, when granted default made in the punctual payment of such deferred payments, or any of them, at maturity, shall operate to terminate the applicant's membership
539 and to cancel his certificate thereof without any further act or ceremony, and provided further that if any member to

whom time shall have so been granted, shall die before maturity of such payments, or any of them, the amount thereof then remaining unpaid shall operate as payment, *pro tanto*, of the amount due from this company on account of such death and the company shall be liable only for the residue.

If the applicant be a minor, he must, at the option of the company, also furnish satisfactory surety that he will not thereafter disaffirm his said acts.

Upon the rejection of any application, all moneys so deposited (except three dollars to meet the expense of his medical examination) shall be returned to the applicant on demand.

V.

An applicant may be admitted to half membership in this company, and to as many as three memberships therein; but in every such case his deposits and further assessments shall be proportionately diminished or increased. Certificates of membership shall be issued by this company to its members, under the seal of the corporation, signed by the president and secretary thereof, countersigned by the chairman of the board of trustees, and expressing the number of memberships they hold respectively; and the obligations of this company to its members shall be such, and such only, as are expressed in said certificates, any correspondence or verbal communications to the contrary notwithstanding.

VI.

Each member of this company shall and will pay thereto, on the last secular day of September in each year, an assessment equal to fifteen per cent. of his guaranty deposit, to meet the operating expenses and to be known as his annual dues; and upon the death of any member, each surviving member shall and will also pay to said company, on demand made therefor, as hereinafter provided, an assessment equal to two per cent. of his guaranty deposit, and the same, or so much thereof as shall be necessary, shall be by said company paid to the family of the deceased member or other designated beneficiary; and such assessment shall be known as his mortuary assessment. All assessments upon members of this company, whether for annual dues or death losses, shall be apportioned among them *pro rata*, that is to say, in proportion to the amounts of their guaranty deposits respectively, and the same shall be payable at the depository where the member lodged his application for membership or at the successor thereof or at the principal office of this company at Saint Paul in the State of Minnesota accordingly as the applicant shall have provided in his original application for membership or thereafter in writing duly executed and filed by him with the company's secretary. In order to secure prompt payment of all losses occasioned by death of members, and to avoid unreasonable expense incident to assessments on

account thereof, and also to promote the convenience of members, said mortuary assessments need not be made on account of each death loss separately, but may be made at stated intervals to provide for all death losses theretofore established and approved; and when so made, the same shall be uniformly two per cent. of the member's guaranty deposit on account of each previously established, approved but unpaid death loss; and in case such assessments so made, shall produce a gross amount in excess of that needed to pay such previously established, approved and unpaid death losses, then such excess may and shall be used to discharge death losses subsequently approved. The times and method of making assessments hereunder shall be regulated by an appropriate by-law, duly adopted by the board of trustees, and each assessment actually made hereunder shall become and be conclusively binding valid and effectual, to all intents and purposes, as against each member, after the lapse of ten days from demand for
542 its payment, as hereinafter provided, unless objection thereto be made by him in writing and filed with the secretary of the company, before expiration of said period of ten days.

VII.

A member of this — shall continue and be such only so long as he shall promptly pay thereto all annual dues and mortuary assessments made hereunder; and, in case of default on his part in that behalf, all moneys by him paid or pledged to said — shall and may, nevertheless, be used and applied to the purposes for which the same were so paid or pledged. This corporation shall have no capital stock, and all membership fees and annual dues shall be used to defray the current expenses, to increase its efficiency and protective capacity, and the residue thereof, if any, shall be used to pay death losses.

VIII.

Any person having once been a member of this company may be readmitted thereto upon the same terms as other persons upon furnishing satisfactory evidence of his good health and upon paying an amount equal to all assessments which would have been made against him down to the date of his application for such readmission, if his membership had never lapsed; but in such cases, if the board of trustees shall be satisfied that such applicant's default was not wilful, but was occasioned by sickness or other misfortune, then he shall have credit upon his application for readmittance for the amount of his original guaranty deposit or membership fee, or both, as said board shall direct.

543 IX.

It shall be the duty of the respective members of this company, as well as every officer and agent thereof, to promptly report to its board of trustees every infraction of these articles as well as any

breach of duty on the *aprt* of any member, officer or agent thereof; also concerning the application of ineligible or unworthy person for membership; and thereupon it shall be the duty of said board of trustees to investigate such charge, and to take adequate measures for the protection of all concerned.

X.

All amounts pledged to this company to secure payment of assessments occasioned by death of its members, shall be used only for this purpose, and meanwhile the same shall be and remain invested in United States registered bonds, and shall constitute and be known as "the guaranty trust fund." Such bonds shall be made payable to this company and shall be transferable or convertible only upon resolution of its board of trustees and such board shall have the exclusive charge and control thereof.

All interest realized from such bonds shall meanwhile be used to defray the company's operating expenses.

This article shall never be amended, or in any way at all changed, without the consent of every member of this company, to be given in writing signed by him, and filed with the company's secretary, and reciting in full proposed amendment or change.

544 XI.

All losses occasioned by death of members shall be collected by this company from its members; and in case of default on part of any member, the amount of his assessment on account of such loss shall be paid out of his guaranty deposit. All assessments upon the members of this company for the payment of death losses shall be made by resolution of the board of trustees, and thereupon a statement shall be prepared showing the name and residence of the deceased member, the date of his death and tha number of memberships then held by him. A copy of said statement showing the amount due from him on account thereof, with request to pay the same, shall be served on each member by said company or by its proper depository, and such service may be either personal or by mail; and if by mail, the proper mailing of such copy and request by said company or by such depository shall constitute a sufficient demand for the payment of such assessment and the same shall be paid within thirty days after such demand. Nothing herein shall be construed to require this company to make an assessment unnecessarily or immediately upon the death of a member, nor to prohibit postponing an assessment until other death claims shall have accrued sufficient, in the judgment of the officers of this company, to warrant an assessment thereunder. If any mortuary assessment of two per cent. of the guaranty deposit of each member shall produce an amount more than sufficient to discharge all previously established and approved death claims, then the excess so realized shall be applied to the payment of the next maturing
545 death claim or claims and to the extent so paid no other assessment shall be made on account thereof.

XII.

Upon the death of each member of this company, his family or designated beneficiary thall receive therefrom a sum equal to two per cent. of the then subsisting guaranty trust fund of this company not exceeding, however, two thousand dollars upon each full membership and one thousand dollars upon each half membership held by the deceased and in force at the time of his death, and not exceeding six thousand dollars in any case. Such amounts shall be paid as soon as practicable and in all cases within sixty days after due proof of such death; and such payments shall be made to the family of the deceased member, or other duly designated beneficiary, only upon the receipt of such person or persons for them as the deceased shall have designated therefor in his original application, or thereafter under his hand and duly acknowledged and filed with the secretary of this company.

XIII.

The fiscal year of this company shall commence on the first secular day of September in each year. The annual dues of each member shall be paid to this company at its office in Saint Paul in the State of Minnesota (or at the proper depository for it) on or before the last secular day of September in each year and
546 without — therefor. It shall be the duty of the company to furnish to each member proper vouchers for each payment of annual dues as well as for each payment of a mortuary assessment, to be executed under and according tothe by-laws. During September in each year the secretary of this company shall, without unnecessary delay, cause to be prepared and mailed to each member a statement showing, First, the number of memberships in force at the beginning of the current fiscal year. Second, the amount of the guaranty trust fund then on hand, either in money or in bonds, and how much in each. Third, the number and amount of death losses if any, sustained and then unpaid.

XIV.

The officers of this company shall be a president, vice-president, secretary, treasurer, medical director, attorney and five trustees. The first board of trustees are, by the incorporators of this company, hereby chosen, and shall be Bruno Beaupre, whose term of office shall be two years; William R. Merriam, whose term of office shall be four years; John B. Sanborn, whose term of office shall be six years; Maurice Auerbach whose term of office shall be eight years; and Charles H. Bigelow, whose term of office shall be ten years, and each of whom shall continue in office from the first Monday in August, A. D. 1880, until his successor is duly elected or appointed and qualified, and shall reside in Saint Paul in said State, meanwhile, and permanent removal from said Saint Paul by any trustee hereby appointed, or hereafter appointed or elected, shall operate

as a formal resignation by him of such office. All vacancies
547 in said board, whether occasioned by death or resignation, shall be filled by the remaining members of said board; but the trustees so appointed shall continue in office for the unexpired term of his predecessor. There shall be elected by the members of this company, at the office thereof in said Saint Paul, on the first Monday of August, A. D. 1882, and biennially thereafter, one trustee, which election shall be conducted and canvassed according to the by-laws of this company. At any election of trustees hereunder, each member shall be entitled to cast one vote for each full membership, and half a vote for each half membership then held by him.

The other officers of this company shall be appointed by said board of trustees, at the office of the company, at said Saint Paul on the first Saturday after the first Monday of August, A. D. 1880 and biennially thereafter. The officers so appointed shall continue in office until their successors are duly appointed and qualified respectively.

Such board of trustees shall hold regular meetings at the office of the company on the first Monday of each month, and shall have power: First, to adopt and provide a corporate seal for said company, also to establish by-laws and make all rules and regulations deemed by them expedient for the management of the affairs of this company, in accordance with law and not incompatible with an honest purpose. Second, to appoint the other officers of this corporation, to fix their salaries, to define their respective provinces
548 and duties; to suspend or remove any of them for cause, and to fill all vacancies occasioned thereby or by death. Third, to establish fiscal agents in any place, to be known as depositaries, and to define their powers and duties; also, to fix their compensation. Fourth, to reduce the rate of assessments for death losses, as well as those for operating expenses in case the same prove greater than necessary to discharge the obligations of said company. Fifth, to amend these articles (except as herein otherwise provided) and to generally direct, manage and control the business and concerns of this company.

In testimony whereof, a majority of the board of trustees of said association have hereunto set their hands and seals this 28th day of November, A. D. 1890.

In presence of

MAURICE AUERBACH.
JOHN B. SANBORN.
BRUNO BEAUPRE.
W. B. DEAN.
RUSSELL R. DORR.
DOUGLAS PUTNAM.

549 EXHIBIT "C."

Articles of Incorporation of the Bankers Life Association of Minnesota.

At a meeting of the board of trustees of the Bankers Life Association of Minnesota, held in the office of the company in St. Paul, on Monday the twenty-first day of November, 1892, there being present every member of said board, to wit: Charles H. Bigelow, Maurice Auerbach, John B. Sanborn, William B. Dean and Bruno Beaupre, the following resolution was unanimously adopted:

"Resolved, by the board of trustees of the Bankers Life Association of Minnesota, That, by virtue of the power vested in said board by the articles of incorporation of said association, the articles of incorporation are hereby amended and re-enacted so as to read as follows:

Articles of Incorporation.

I.

The name of this corporation shall be The Bankers Life Association of Minnesota," and its location and principal place of business shall be at St. Paul in said State.

II.

The general purpose of this corporation shall be to secure benevolent and fraternal co-operation between its members, and to the families of its deceased members, and other designated bene-
550 ficiaries pecuniary assistance.

III.

The general plans of its operation shall be to assess and collect from its members (so long as they continue such) and thereupon pay over to the families of its deceased members or other designated beneficiaries stipulated sums of money, to be secured to them by sufficient pledges of money, which shall be kept invested meanwhile in United States registered bonds,

IV.

Any male person not less than eighteen nor over fifty-five years of age (counting to his nearest birthday,) approved by the medical director of this company, may be admitted to one membership therein, upon his application therefor, and upon his depositing with or to the credit of this company the following sums of money: First, as many dollars as he is years of age (counting to his nearest birthday,) as his deposit in the guaranty trust fund of the association, which fund shall be a pledge to secure payments to be made by this

association for death of members, and shall belong to this association. Second, a membership fee equal to half his guaranty deposit. Third, his proportion of the annual expense assessment for the company's current fiscal year. Provided, however, that the time for making of said payments or any of them, may be granted to any applicant, subject to the approval thereof by the board of trustees; but when granted, default made in the punctual payment of such deferred payments, or any of them, at maturity, shall operate to terminate the applicant's membership, and to
551 cancel his certificate thereof without any further act or ceremony; and provided further, that if any member to whom time shall have been so granted, shall die before maturity of such deferred payments or any of them, the amount thereof then remaining unpaid shall operate as payment, *pro tanto* of the amount due from this company on account of such death, and the company shall be liable only for the residue. If the applicant be a minor, he must, at the option of the company, also furnish satisfactory surety that he will not thereafter disaffirm his said acts.

Upon the rejection of any application, all moneys so deposited (except three dollars to meet the expense of his medical examination) shall be returned to the applicant on demand.

V.

An applicant may be admitted to as many as three memberships in the company, but in every such case his payments shall be proportionately increased.

Certificates of membership shall be issued by this company to its members under the seal of the corporation, signed by the president and the secretary thereof; and the obligations of this company to its members shall be such, and such only, as are expressed in said certificates, and the applications therefor, any correspondence or verbal communication to the contrary notwithstanding.

552 VI.

Each member of this corporation shall pay thereto, on the last secular day of September in each year, an assessment equal to fifteen per cent. on his contribution to the guaranty trust fund to meet the operating expenses, and to be known as his "annual dues," and upon the death of any member each surviving member shall also pay to said corporation on demand, an assessment equal to two per cent. on his contribution to said guaranty trust fund, and out of the sum obtained from said last-named assessment, which shall be known as the mortuary assessment," there shall be paid to such beneficiary as is designated in the membership certificate, the sum of money in the said certificate named. All assessments upon members of this corporation shall be apportioned among all members thereof *pro rata*, that is to say, in proportion to the amount that each member has paid into said guaranty trust fund. All assessments

due or to be paid to this corporation shall be paid to such officers or persons, and at such places as the said board of trustees shall name and specify. In order to secure prompt payment of all losses occasioned by death of its members and to avoid unreasonable expense incident to the making and collection of *a* assessments, and to promote the convenience of all parties, *siad* assessments need not be made on account of each death loss separately, but may be made at stated intervals, as said board of trustees may direct, to provide for all or any death losses of said corporation that have taken place prior to the making
553 of any such assessment or assessments; any assessment for the purpose of paying any deayh losses shall uniformly be two per cent. of each surviving member's contribution to said guaranty trust fund for each such death loss and in case any such assessment shall prodnce a gross amount in excess of the amount needed to pay such death losses, then such excess may be used to discharge death losses subsequently occurring; provided, however, that the board of trustees may, in their discretion, retain in said mortuary fund such amount as will in their judgment, most increase the efficiency of this corporation and secure the prompt payment of all death losses. The times and methods of making assessments shall be regulated and controlled by said board of trustees, and all assessments shall become and be conclusively binding, valid and effectual as against each and all members of this corporation after the lapse of ten days from demand for its payment, and if any member has any objection to any assessment made upon him, he shall, within ten days after such demand for its payment, present any and all objections he has to the same in writing to the secretary of this corporation.

VII.

A member of this corporation shall continue and be such only so long as he shall pay thereto, on the day when the same fall due, all annual dues and mortuary assessments made hereunder; and in case of default on his part in that behalf, all moneys paid by
554 him to said company, including his deposit in the guaranty trust fund, will nevertheless be used and applied to the purposes for which the same were so paid and deposited. This corporation shall have no capital stock, and all membership fees and annual dues shall be used to defray its current expenses and to increase its efficiency and protective capacity, and the residue thereof, if any may be used to pay death losses.

VIII.

Any person having once been a member of this company, may be readmitted, in the discretion of the officers of this association, upon his furnishing them satisfactory evidence that he is in good health, and upon his paying to said association all assessments, dues and other sums of money, which he would have been called upon to pay to this association had he continued to be a member thereof.

IX.

It shall be the duty of the respective members of this company, as well as every officer and agent thereof, to promptly report to its board of trustees every infraction of these articles, as well as any breach of duty on the part of any member, officer or agent thereof; also concerning the application of any ineligible or unworthy person for membership; and thereupon it shall be the duty of said board of trustees to investigate such charge, and to take adequate measures for the protection of all concerned.

555

X.

All amounts pledged to this company to secure payment of assessments occasioned by death of its members, shall be used only for that purpose, and meanwhile the same shall be paid and remain invested in United States registered bonds, and shall constitute and be known as the "guaranty trust fund." Such bonds shall be made payable to this company, and shall be transferable or convertible only upon resolution of its board of trustees, and such board shall have the exclusive charge and control thereof.

All interest realized from such bonds shall meanwhile be used to defray the company's operating expenses.

This article shall never be amended, or in any way at all changed, without the consent of every member of this company, to be given in writing signed by him, and filed with the company's secretary, and reciting in full the proposed amendment or change.

XI.

All losses occasioned by death of members shall be collected by this company from its members. All assessments upon the members of this company for the payment of death losses shall be made by resolution of the board of trustees, and thereupon a statement or notice shall be prepared, showing the name and residence of the deceased member, as it appears upon the books or records of the association, the date of his death, and the number of mem-

556 berships then held by him. A copy of said statement showing the amount due from him on account thereof, with request to pay the same, shall be served on each member by said company, and such service may be either personal or by mail; and if by mail, the mailing of such statement or notice by said company to the address of such member as it appears upon the books or records of this corporation, shall constitute a sufficient demand for the payment of such assessment, and the same shall be paid within thirty days after such demand. Nothing herein shall be construed to require this association to make an assessment unnecessarily, or immediately upon the death of a member, or to prohibit postponing assessments until other death claims shall have been accrued sufficient, in the judgment of the trustees of this association, to warrant an assessment hereunder. If any mortuary assessment of two per

cent. of the deposit of each member in the guaranty trust fund shall produce an amount more than sufficient to discharge all previously approved death claims, then the excess so realized may be applied to the payment of the next maturing death claim or claims. In case of death, or default on the part of any member to pay any of his assessments, the association may use his deposit in the guaranty trust fund to pay death losses in such manner as it shall deem best, and such use shall not work a payment of any assessment against such defaulting member.

557 XII.

Upon the death of each member of this company, his family or designated beneficiary shall receive therefrom a sum equal to two per cent. of the then subsisting guaranty trust fund of this company, not exceeding, however, two thousand dollars upon each full membership and one thousand dollars upon each half membership held by the deceased and in force at the time of his death, and not exceeding six thousand dollars in any case. Such amounts shall be paid as soon as practicable, and in all cases within sixty days after due proof of such death; and such payment shall be made to the family of the deceased member, or other duly designated beneficiary, only upon the receipt of such person or persons for them as the deceased shall have designated therefor in his original application, or thereafter under his hand and duly acknowledged and filed with the secretary of this company.

XIII.

The fiscal year of this company shall commence on the first secular day of September in each year. The annual dues of each member shall be paid to this company at its office in Saint Paul, in the State of Minnesota (or at the proper depository for it—, on or before the last secular day of September in each year and without demand therefor. It shall be the duty of the company to furnish to each member proper vouchers for each payment of annual dues, as well as for each payment of a mortuary assessment, to be executed under and according to the by-laws. During September in each year the secretary of this company shall, without unnecessary delay,
558 cause to be prepare- and mailed to each member a statement showing: First, the number of membershipa in force at the beginning of the current fiscal year; second, the amount of the guaranty trust fund then on hand, either in money or in bonds and how much in each; third, the number and amount of death losses, if any, sustained and then unpaid.

XIV.

The officers of this company shall be a president, vice-president, treasurer, medical director, attorney and five trustees. The first board of trustees are, by the incorporators of this company, hereby chosen and shall be Bruno Beaupre, whose term of office shall be

two years; William R. Merriam, whose term of office shall be four years; John B. Sanborn whose term of office shall be six years; Maurice Auerbach, whose term of office shall be eight years; and Charles H. Bigelow whose term of office shall be ten years, and each of whom shall continue in office from the first Monday of August A. D. 1880, until his successor is duly elected or appointed and qualified, and shall reside at St. Paul, in said State meanwhile; and permanent removal from said St. Paul by any trustee hereby appointed, or hereafter appointed or elected, shall operate as a formal resignation by him of such office. All vacancies in said board, whether occasioned by death or resignation, shall be filled by the remaining members of said board; but the trustee so appointed shall continue in office for the unexpired term of his predecessor. There
559 shall be elected by the members of this company, at the office thereof at said St. Paul, on the first Monday of August, A. D. 1882, and biannually thereafter, one trustee, which election shall be conducted and canvasses according to the by-laws of this company. At any election of trustees hereunder, each member shall be entitled to cast one vote for each full membership, and half a vote for each half membership then held by him.

The other officers of this company shall be appointed by said board of trustees at the office of the company at said St. Paul on the first Saturday after the first Monday in August, A. D. 1880, and biennually thereafter. The officers so appointed shall continue in office until their successors are duly appointed and qualified respectively.

Such board of trustees shall hold regular meetings at the office of the company on the first Monday of each month, and shall have power: First, to adopt and provide a corporate seal for said company, also to establish by-laws and make all rules and regulations deemed by them expedient for the management of the affairs of this company, in accordance with law and not incompatible with an honest purpose. Second, to appoint the other officers of this corporation, to fix their salaries, to define their respective provinces and duties; to suspend or remove any of them for cause, and to fill all vacancies occasioned thereby or by death. Third, to establish fiscal agents in any place, to be known as depositaries, and to define
560 their powers and duties; also to fix their compensation. Fourth, to reduce the rate of assessments for death losses, as well as those for operating expenses, in case the same prove greater than necessary to discharge the obligations of said company. Fifth, to amend these articles (except as therein otherwise provided) and to generally direct, manage and control the business and concerns of this company.

CHARLES H. BIGELOW. [SEAL.]
MAURICE AUERBACH. [SEAL.]
JOHN B. SANBORN. [SEAL.]
WILLIAM B. DEAN. [SEAL.]
BRUNO BEAUPRE. [SEAL.]

In presence of
DOUGLAS PUTNAM.
W. J. SONNEN.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it known that on this twenty-fifth day of November, A. D. 1892, cams personally before me Charles H. Bigelow, Maurice Auerbach, John B. Sanborn, William B. Dean and Bruno Beaupre, each to me well known to be the same persons who are referred to in and who executed the foregoing instrument, and they then and there severally and respectively acknowledged that they executed the same freely and voluntarily and for the uses and purposes
561 therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year first above written.

[NOTARIAL SEAL.] W. J. SONNEN,
Notary Public, Ramsey County, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Douglas Putnam being duly sworn, did depose and say that he is the secretary of the Bankers Life Association of Minnesota; that the foregoing amendment to the articles of said association was duly adopted by the unanimous vote of all the trustees thereof at a meeting held in St. Paul on the twenty-first day of November, A. D. 1892.

DOUGLAS PUTNAM.

Subscribed and sworn to before me this twenty-fifth day of November, A. D. 1892.

[NOTARIAL SEAL.] W. J. SONNEN,
Notary Public, Ramsey County, Minnesota.

562 STATE OF MINNESOTA, } ss:
County of Ramsey, }

The attorney general of said State hereby certifies that he has examined the amended articles of the Bankers Life Association of Minnesota, made, executed, acknowledged and this day filed with the State insurance commissioner of said State, and the same conforms to the requirements of chapter 184 of the General Laws of the State of Minnesota of the Year 1885, and is not inconsistent with the Constitution and laws of the United States, and of the State of Minnesota, and that the same is not inconsistent with any or either of said constitutions or laws.

In testimony whereof, said attorney general has hereunto subscribed his name this twenty-sixth day of November, 1892.

MOSES E. CLAPP,
Attorney General of the State of Minnesota.

563 STATE OF MINNESOTA, } ss:
County of Ramsey, }

The insurance commissioner of the State of Minnesota, namely C. H. Smith, hereby certifies that he has compared the foregoing copy of amended articles of incorporation of the Bankers Life Association of Minnesota, and copy of the certificate of the attorney general of said State, in relation thereto with the originals thereof, now on file with said insurance commissioner, at his office in the capitol at St. Paul in said State, as provided and required by law, and that the same are severally and respectively true, correct and complete transcripts of and from the said originals thereof.

In testimony whereof, said insurance commissioner has hereunto set his hand and official seal this twenty-sixth day of November, 1892.

C. H. SMITH,

[SEAL.] *Insurance Commissioner of the State of Minnesota.*

564 EXHIBIT "D."

Articles of Incorporation of the Bankers' Life Association of Minnesota.

We, the undersigned, do hereby represent and declare that the board of trustees of the Bankers' Life Association of Minnesota consists of five members; that the undersigned are members and constitute all said board of trustees; that said The Bankers' Life Association of Minnesota and said board of trustees intend to and do hereby amend the articles of incorporation of and reincorporate said The Bankers Life Association of Minnesota, and form and continue an organization for the transaction of life and endowment insurance, upon the assessment plan; and to that end, and as and for its articles of incorporation, do further hereby declare as follows, viz:

I.

The name of this corporation is "The Bankers' Life Association of Minnesota."

II.

The home office and the principal office for the transaction of its business shall be in the city of Saint Paul State of Minnesota.

III.

The mode and manner in which the corporate powers will be exercised are as follows, viz:

565 Insurance policies will be issued by the association upon the lives of male persons not under the age of eighteen (18) years, or over the age of sixty (60) years, for such amounts, for a

whole life or for a term of years, payable upon the death of the insured, or at any other stated time as the by-laws shall provide. Members may be classified in such manner that special benefits, privileges, provisions and requirements not prejudicial to other members, shall apply to one or more classes, but all members of the same class shall be entitled and subject to like benefits, privileges, provisions and requirements. Persons upon whose lives policies are issued shall be known as the "insured," and upon and by the delivery and acceptance of a policy the insured shall become a member of this association, entitled to its privileges and benefits and subject to its laws, rules and regulations. Payments will be made from moneys collected from members, and interest thereon and accretions thereto.

Payments of membership or admission fees, dues and assessments, or any or either thereof, or any other contributions by members, may be prescribed and regulated by the by-laws and policies or either of them.

Provision may be made for the creation of a reserve fund in connection with, in addition to, or independent of "the guaranty trust fund" mentioned in article X hereof; and may be invested in such manner and used for such lawful association purpose or purposes as the by-laws shall provide.

566 Payments in advance at stated times of specified premiums or assessments may be provided for, but the insured's liability to contribute to the payment of policy claims or death losses shall not be limited to a fixed sum.

The by-laws may provide and supply any additional provisions, mandates or directions needed for the proper or orderly transaction of the corporate business, and not inconsistent herewith or in conflict with the constitution or laws of the State of Minnesota or the Constitution or laws of the United States.

IV.

The general control and management of the affairs of this association and of all its funds are vested in a board of trustees, and the following officers, viz., president, vice-president, secretary, treasurer, medical director, and an attorney.

V.

The board of trustees shall be composed of five members.

The powers and duties of the officers shall at all times be subject to the provision of the by-laws and the actions and directions of the board of trustees.

VI.

The mode and manner of electing members of the board of trustees and officers shall be as follows, viz: Members of the board of

trustees shall be elected by vote of the members; officers shall be elected by the board of trustees.

Membership in the board of trustees shall not disqualify
567 a person for any office.

VII.

The term of office of each member of the board of trustees shall be ten (10) years; provided that the present board of trustees shall consist of the following named persons, residents of said city of Saint Paul, to-wit, Charles H. Bigelow, Maurice Auerbach, John B. Sanborn, William R. Merriam and Crawford Livingston; and, provided further, that the respective terms of office of the said present member-of said present board of trustees shall be and continue as follows, viz: The term of office of the said Charles H. Bigelow shall be and continue until the first Monday in August, 1900; the term of office of the said Maurice Auerbach shall be and continue until the first Monday in August 1908; the term of office of the said John B. Sanborn shall be and continue until the first Monday in August, 1906; the term of office of the said William R. Merriam shall be and continue until the first Monday in August, 1904; and the term of office of the said Crawford Livingston shall be and continue until the first Monday in August, 1902; and provided, further, that failure at any time to elect any member of the board of trustees shall not cause a vacancy, but the present or old member shall hold over until his successor has been elected and qualified.

The board of trustees shall have power and authority to fill all vacancies.

568 The officers may be elected at such times and for such terms as the by-laws shall provide; provided, that until their successors are elected and qualified the following named persons shall constitute the officers of this association: Cortlandt M. Taylor, president; John B. Sanborn, vice-president; Douglas Putnam, secretary; Charles H. Bigelow, treasurer; Dr. C. L. Greene, medical director, and T. R. Palmer, attorney.

VIII.

Stated annual meetings of the members of this association shall be held at such times, at such place or places, in such manner and subject to such regulations, restrictions and provisions as the by-laws shall -rovide.

IX.

The by-laws shall contain provisions which will operate to preserve, continue, guard and protect all of the existing rights and privileges of, and promises and pledges to, persons who are members of this association at the time of the taking effect of these amended articles and articles of reincorporation and to preserve, continue and enforce all of the present duties obligations and promises and agreements of said members to the association, except in so far and in

such respects as necessity or the general good and welfare of the membership of the association as a whole shall require changes in or relinquishment of the same.

The by-laws shall provide the number of votes to which the respective members will be entitled at meetings of members.

569 X.

All amounts pledged to this company to secure payment of assessments occasioned by death of its members shall be used only for that purpose, and meanwhile the same shall be and remain invested in United States registered bonds, and shall constitute and be known as "the guaranty trust fund." Such bonds shall be made payable to this company, and shall be transferable or convertible only upon resolution of its board of trustees, and such board shall have exclusive charge and control thereof.

All interest realized from such bonds shall meanwhile be used to defray the company's operating expenses.

This article shall never be amended, or in any way at all changed, without the consent of every member of this company, to be given in writing, signed by him and filed with the company's secretary, and reciting in full the proposed amendment or change.

XI.

These articles may be amended in any lawful manner by the board of trustees.

By-laws may be adopted, amended or abrogated in any lawful manner by the board of trustees.

In witness whereof, we have hereunto set our hands and affixed the corporate seal of said The Bankers' Life Association of Minnesota this 24th day of December, 1898.

CHARLES H. BIGELOW.
MAURICE AUERBACH.
[CORPORATE SEAL.] JOHN B. SANBORN.
WILLIAM R. MERRIAM.
CRAWFORD LIVINGSTON.

570 STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 24th day of December, 1898, before me personally appeared Charles H. Bigelow, Maurice Auerbach, John B. Sanborn and Crawford Livingston, to me known to be the persons described in and who executed the foregoing declaration and instrument, and acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] H. A. HAGEMAN,
Notary Public, Ramsey County, Minn.

(Ten cent revenue stamp.)

DISTRICT OF COLUMBIA, } ss:
City of Washington, }

On this 27th day of December 1898, before me personally appeared William R. Merriam, to me known to be the person described in and who executed the foregoing declaration and instrument, and acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] CHARLES R. HARBAN,
Notary Public, District of Columbia, City of Washington.

(Ten cent revenue stamp.)

571 STATE OF MINNESOTA, } ss:
County of Ramsey, }

I, Henry W. Childs, as attorney general of the State of Minnesota, do hereby certify and declare that I have carefully examined the foregoing and annexed declaration of amrndment of articled and of the reincorporation of the Bankers' Life Association of Minnesota; that the said declaration has been signed and duly acknowledge- by a majority of the board of trustees of said The Bankers' Life Association of Minnesota, and does in all respects conform to the requirements and provisions of chapter 184 of the General Laws of the State of Minnesota of the Year 1885, and the act or acts amendatory thereof or supplemental thereto.

In testimony whereof, I have hereunto subscribed my name this 30th day of December, 1898.

H. W. CHILDS,
As Attorney General of the State of Minnesota.

(Ten cent revenue stamp.)

STATE OF MINNESOTA, } ss:
County of Ramsey, }

I, Elmer H. Dearth, as insurance commissioner of the State of Minnesota, do hereby certify that I have carefully compared the foregoing and annexed copy of declaration of amendment of articles and of reincorporation of the Bankers' Life Association of
572 Minnesota, and the certificate of the attorney general of said State of Minnesota, of conformity with the laws of said State, thereto attached, with the *r*oiginal declaration, and certificate of conformity thereto attached, filed and recorded in my office on the 30th day of December, 1898, and that the same is a true and correct copy of said declaration and of said certificate of conformity, and of the whole of each thereof.

And I further certify that I have this day issued to said The Bankers' Life Association of Minnesota, as provided by law, a license for the transaction of business.

In witness whereof, I have hereunto set my hand and affixed my seal of office this 30th day of December, 1898.

[Ins. Com. Official Seal.]

ELMER H. DEARTH,
As Insurance Commissioner of the State of Minnesota.

(Ten cent revenue stamp.)

STATE OF MINNESOTA, } ss:
County of Ramsey, }

I, Dennis M. Sullivan, as auditor of the county of Ramsey, State of Minnesota, do hereby certify that on the 31st day of December, 1898, there was filed in my office a copy of the declaration of amendment of articles and of reincorporation of the Bankers' Life Association of Minnesota bearing date the 24th day of Decem-
573 ber, 1898, and copy of certificate of the attorney general of the State of Minnesota, that said declaration conforms to the laws of said State thereto attached, all duly certified, under date of December 30th, 1898, by the insurance commissioner of said State, to be true and correct copies of the originals thereof filed in his said office on the 30th day of December, 1898. And I further hereby certify that said certified copies of the declaration and certificate of conformity were accompanied by a license from the said insurance commissioner for the transaction of business by the said The Bankers' Life Association of Minnesota, which license was at the same time and with said certified copies of declaration and certificate of conformity filed in this office.

Dated at St. Paul, Minnesota, this 31st day of December 1898.

(Ten cent revenue stamp.)

D. M. SULLIVAN,
Per W. P. BORREN, *Deputy,*
As Auditor of the County of Ramsey, State of Minnesota.

[County Auditor's Official Seal.]

574 BY-LAWS.

ARTICLE I.

Annual Meeting—Special Meetings.

SECTION 1. Annual meeting.—An annual meeting of the members shall be held at the home office of the company, or at such other place in the city of St. Paul, State of Minnesota as the board of trustees may designate, on the first Monday of August in each year, at ten (10) o'clock a. m., for the election of trustees, when any are to be elected, and the transaction of such other business as may properly come before it. In the election of trustees the polls shall be

opened as soon as nominations are closed, and shall remain open until 3 o'clock p. m. of the day of election.

An election to fill a vacancy shall be for the unexpired term and until a successor is elected.

SEC. 2. Nominations—Plurality.—Candidates for the office of trustee shall be placed in nomination before voting commences. Votes for persons not so nominated shall not be counted or considered. The election of each trustee shall be by ballot, and a plurality of votes cast shall elect. On all other questions a majority of the votes cast shall decide.

SEC. 3. Basis of voting—Proxies.—At any meeting of members, regular or special, each member in good standing shall be entitled to one vote for each $1,000 of insurance on his life, and a
575 fractional vote at the same rate on *fractional vote at the same rate on* fractional parts of $1,000 of such insurance. Any vote may be cast at any meeting for any purpose, either in person or by proxy duly appointed in writing. The proxy may be appointed in and by any application for any insurance or membership, or by any other proper writing signed by the member. Voting by proxy shall be subject to the following rules:

(1.) The proxy must be registered with the secretary at least five days before the meeting at which it is offered.

(2.) No individual not a member shall be appointed as the proxy of any member.

(3.) Proxies shall remain operative until revoked by a notice in writing signed by the member and filed with the secretary.

Insurance to the amount of $250,000, represented either in person or by proxy, or partly in person and partly by proxy, shall constitute a quorum at all annual and all special meetings of members.

SEC. 4. Special meetings—Notice.—The board of trustees, or the president and two trustees, may call a special meeting of the members at any time, and the secretary shall give notice of such meeting by mailing to each member, at his address then appearing on the books of the company, a notice of the time, place and object of such meeting, at least twenty days before the date set for the same; and at such meeting no business shall be transacted other than that stated in the notice.

576 ARTICLE II.

Trustees.

SECTION 1. Residence.—The members of the board of trustees at all times during their respective terms of office shall reside in the county of Ramsey, State of Minnesota. Failure to do so shall terminate the member's office, and cause a vacancy, unless the board shall otherwise determine.

SEC. 2. Regular meetings.—Regular meetings of the board of trustees shall be held at the home office on the first Monday of each month and on the first Saturday after the first Monday in August of each even numbered year, at three o'clock p. m.

SEC. 3. Special meetings.—Special meetings of the board of trustees may be held at any time, and may be called by the secretary, of his own motion, at the request of the president, or upon the written request of two trustees. A notice of such meeting shall be mailed by the secretary to each member of the board, at his usual postoffice address, or left at his residence or place of business, or delivered to him in person.

SEC. 4. Quorum.—Three members of the board shall constitute a quorum for the transaction of any business, except to repeal, modify, alter or amend these by-laws or to amend the articles of incorporation.

SEC. 5. Election of officers.—The president, vice-president,
577 secretary, treasurer, medical director and attorney shall be elected at the regular meeting of the board, held on the first Saturday after the first Monday in August of each even numbered year. The board may fill any vacancy in any office during the term thereof, at any regular or special meeting of the board. The board shall determine, fix and regulate the salary or compensation of each officer, shall approve all bonds, and no person shall assume the duties of an office until the required bond is approved. The board may at any time suspend or remove any officer for cause.

SEC. 6. General powers.—The board may adopt any rules, regulations and methods; issue different forms of policies containing special benefits, privileges, provisions and conditions, or either of the same; fix rates of charges to members and for life insurance; levy assessments, and increase assessments as often as and whenever by the board deemed necessary; and transact any business in any way tending to promote the best interests of the company, and not inconsistent with the constitution or laws of the State of Minnesota or of the United States, or with the articles of incorporation or these by-laws. Except in cases of violation of these articles of incorporation, these by-laws, or some positive law, and except in case of fraud or such gross mistake as to amount to fraud, the actions and decisions of the board shall be conclusive and binding upon members.

SEC. 7. Investment of funds—Care of securities, etc.—Ex-
578 cept as otherwise by law, by the articles of incorporation or herein provided, the board of trustees shall determine in what securities and in what manner the different funds of the company shall be invested, and shall also from time to time designate where, and in what manner, and under what circumstances, all bonds and securities belonging to the company shall be deposited for safe-keeping. All bonds and securities shall at all times be subject to the order of the board of trustees.

SEC. 8. Election of chairman—Powers.—The board of trustees when electing the other officers of this company shall also elect from its members a chairman who shall preside at the meetings of said board, and, in his absence, said board may elect a chairman *pro tem.* The chairman shall have power to suspend any officer of the company for cause until a meeting of the board can be held.

ARTICLE III.

Officers and Their Duties.

SECTION 1. President.—The president shall have the general supervision of the affairs of the company, and except as otherwise provided shall adopt and carry into effect measures for increasing the membership of the company, subject to the approval of the board of trustees. He shall preside at meetings of the members, sign all policies of insurance, and countersign all checks drawn on funds of the company, and shall perform such other duties as are or may be required by law, the articles of incorporation, the
579 by-laws or the board of trustees. He shall give a bond satisfactory to and approved by the board of trustees in the sum of $10,000 for the honest, faithful and careful performance of all his duties.

SEC. 2. Secretary.—The secretary shall keep a record of all the meetings and transactions of the company and of the board of trustees. He shall keep accurate records and books of account of the company, showing each and all members in each class, the details of all receipts and expenditures of money, and from what sources and for what purposes, and separate accounts of each fund. He shall look after, care for and protect all moneys and payments received by the company in the transaction of its business, and deposit the same in banks in the name of the company, as directed by the board of trustees. He shall draw and sign all checks on the funds of the company; prepare and sign all policies of insurance and all certificates of membership; prepare and properly mail or serve all notices required to be mailed to or served upon members, or upon the trustees. He shall keep the corporate seal, and affix the same whenever and wherever necessary. He shall keep a record of the deceased members, and of the amounts paid to their beneficiaries. He shall prepare all required reports. He shall file all appointments of proxies, and immediately register the same in a book kept for that purpose, endorsing on each proxy appointment the date of receipt and registration. He shall present a report at each regular meeting of the board of trustees of the business operations of the company for the previous month.
580 He shall at all times hold the books and correspondence of the company open to the inspection of the trustees or any of them. He may adjourn any meeting of the members or of the board, in the absence of other persons authorized to do so. Except as otherwise provided, he shall perform such other duties as the board of trustees shall from time to time impose. He shall give a bond satisfactory to and approved by the board of trustees, in the sum of $25,000, for the honest, faithful and careful performance of all his duties. Any duty thereby imposed upon the secretary, except that of signing his name, may be performed by another under his supervision and direction, unless otherwise directed by the board,

and the same shall be deemed to have been done and performed by him.

SEC. 4. Treasurer.—The treasurer shall sign countersign or endorse any and all checks, drafts, bills of exchange, negotiable instruments and other instruments and documents which, by law, the usages and customs of business, the board of trustees or otherwise, it is or shall be made necessary for him to sign, countersign or endorse; and shall perform such other duties as the board of trustees may from time to time prescribe.

SEC. 5. Medical director.—The medical director shall examine all applications for insurance, and return the same to the secretary with his approval or disapproval; and his rejection of an application shall be final. Except as otherwise provided, he shall perform such other duties as the board of trustees shall from time to time impose.

581 SEC. 6. Attorney.—The attorney shall act as counsel and legal adviser of the board of trustees and of the officers and shall perform such other duties as the board of trustees or the officers of the company may request.

ARTICLE IV.

Members.

SECTION 1. Qualification.—Any male person not less than eighteen nor over sixty years of age (counting to his nearest birthday), approved by the medical director, may be admitted to membership herein upon his application therefor and complying with the articles of incorporation, these by-laws and the rules and regulations of the company.

SEC. 2. Amount of insurance.—No policy shall be issued nor shall any member be insured for more than $10,000; and the board of trustees may limit the amount of insurance to be issued or written on any person's life to any amount less than the amount herein stated.

SEC. 3. Contract—What constitutes.—The application policy and articles of incorporation and by-laws of this company shall constitute the contract between the member and the company.

SEC. 4. Classification of members.—Members in this company shall be classified according to the form, substance, requirements and conditions of the membership certificates or policies issued to them. All members holding membership certificates alike
582 in form, substance, requirements and *and* conditions shall constitute one class; and all members holding membership certificates or policies alike in form substance requirements and conditions, but materially differing in form, substance, requirements or conditions from those of any theretofore existing class, shall constitute a new and separate class.

Separate accounts shall be kept with each class of membe-s which shall at all times show the amounts contributed by each class to the

several funds, or any of them, of the company; and no class of members or policy holders shall finally receive or be allowed to withdraw from any fund more than its just proportion thereof, based upon the contributions to the fund by the members of such class.

SEC. 5. Default—Termination of membership and insurance—Reinstatement.—Except as otherwise provided in these by-laws or expressly provided in the certificate of membership or insurance policy, failure by a member to make any payment required by his certificate or policy, or these by-laws, on the day when due, shall operate to immediately annul and terminate thw certificate or policy, and the membership evidenced thereby; provided, however, that, except as otherwise expressly provided in these by-laws or expressly provided in the certificate of membership or insurance policy, a member in default and whose membership and certificate or policy have ceased and terminated as above provided, may be reinstated by the board of trustees or under its direction at any time, upon furnishing satisfactor- evidence that he is then in good
583 health, and by paying all arrearages, and other sums of money which he would have been called upon to pay had his certificate or policy continued yo be in force, with interest at the rate of six per cent. per annum from the dates the respective payments became due; and provided, further, that the board of trustees may require a formal examination of the applicant by a medical examiner of the company, and the submission of the evidence of good health to the medical director of the company, and the medical director's approval and acceptance of such evidence as satisfactory, as a condition precedent to any reinstatement.

ARTICLE V.

Membership. Class A.

SECTION 1. Who constitute members—Privileges—Prerequisites to membership.—The members of this company who became such or applied for membership prior to the first day of January, 1899, together with members who thereafter apply for membership upon substantially the same terms and conditions and who receive certificates substantially the same in form and substance as those who became members prior to the first day of January, 1899, shall constitute one class and shall be known as class A. Any member of class A shall at all times be entitled to exchange his certificate or certificates of membership, policy or policies for any other form of policy then being issued by this company upon such just and equitable terms and conditions as the board of trustees shall from time to time prescribe; and the board of trustees in the absence of
584 fraud or gross mistake, shall be the sole and final judge as to what are such just and equitable terms and conditions.

Each member of class A, upon application to become such shall deposit with the company the following sums of money:

First. As many dollars as he is years of age,—counting to his

nearest birthday—based upon a membership of two thousand dollars, or a like proportion upon other amounts as his deposit in the guaranty trust fund of the company, which fund shall be a pledge to secure payments to be made by this company for death of members of this class and shall belong to this company; second, a membership fee equal to half his guaranty deposit; third, his proportion of the annual expense assessment for the company's current fiscal year; provided, however, that time for the making of said payments or any of them, may be granted to any applicant, subject to the approval thereof by the board of trustees; but when granted, default made in the punctual payment of such deferred payments or any of them, at maturity, shall operate to terminate the applicant's membership and to cancel his certificate thereof without any further act or ceremony; and, provided, further, that if any member to who-, time shall have been so granted shall die before maturity and payment of such deferred payments or any of them, the amount thereof then remaining unpaid shall operate as payment *pro tanto*,
of the amount due from this company on account of such
585 death, and the company shall be liable only for the residue.

If the applicant be a minor he must, at the option of the company, also furnish satisfactory surety that he will not thereafter disaffirm his asaid acts. Upon the rejection of any application for membership, all moneys so deposited (except three dollars to meet the expense of his medical examination) shall be returned te the applicant on demand.

SEC. 2. Certificates of membership—Amount of contributions.—Except as otherwise in these by-laws provided, an applicant for membership in this class may have issued to him a certificate or certificates of membership or insurance for an amount in the aggregate not exceeding $10,000; provided, that no certificate shall be issued for less than $1,000.

The amount herein specified to be pai- by members on a membership of $2,000 shall form the basis of contributions and payments to be made by applicants for membership in this class; and if the amount of the certificate of membership be more than $2,000 the amount of contributions and payments shall be proportionately larger; if less than $2,000, the amount shall be proportionately less.

SEC. 3. Annual dues, mortuary assessments, etc.—Each member, so long as he continue such, shall pay thereto, on the last secular day of September in each year, an assessment equal to fifteen per cent. on his contribution to the said guaranty trust fund, to meet
the operating expenses, and to be known as his "annual
586 dues," and upon the death of any member each surviving member shall also pay to this company on demand, an assessment equal to two per cent. on his contribution to said guaranty trust fund, and out of the sum obtained from said last named assessment, which shall be known as the mortuary assessment," there shall be paid to such beneficiary as is designated in the membership certificate, the sum of money in the said certificate named;

and if said assessment shall be insufficient to provide sufficient money to pay such death losses, then the board of trustees may make such further assessments on the members as may be necessary to produce sufficient money to pay said death losses, and each assessment for death losses shall be an amount equal to two per cent. on the member's contribution to the guaranty trust fund.

All assessments upon members shall be apportioned among all members *pro rata*, that is to say, in proportion to the amount that each member has paid into said guaranty trust fund. In order to secure prompt payment of all losses occasioned by death of its members, and to avoid unreasonable expense incident to the making and collecting of assessments, and to promote the convenience of all parties, said assessments need not be made on account of each death loss separately, but may be made at stated intervals, as said board of trustees may direct, to provide for all or any death losses that have taken place prior to the making of any such assessment or assessments. Any assessment for the purpose of paying any death losses shall uniformly be two per cent. of each surviving member's contribution to said guaranty trust fund for each such death
587 loss, and in case any such assessment or assessments shall produce a gross amount in excess of the amount needed to pay such death losses, then such excess shall be carried into the mortuary fund and furnish additional security for the payment of future death losses; provided, however, that the board of trustees, may, in their discretion, retain in said mortuary fund such amount as will, in their judgment, most increase the efficiency of this corporation and secure the prompt payment of all death losses at any future time or times.

The times and methods of making assessments shall be regulated and controlled by said board of trustees, and all assessments shall become and be conclusively binding, valid and effectual as against each and all members of this corporation after the lapse of ten days from notice thereof, and if any member has any objection to any assessment made upon him, he shall, within ten days after such notice, present any and all objections he has to the same, in writing, to the secretary.

SEC. 4. Default—Membership ceases upon.—A member shall continue and be such only so long as he shall pay thereto, on the day when the same fall due, all annual dues and mortuary assessments made hereunder; and in case of default on his part in that behalf, all moneys by him paid to said company, including his deposit in the guaranty trust fund, will nevertheless be used and applied to the purposes for which the same were so paid and deposited.

588 SEC. 5. Reinstatement.—A member in default may be reinstated by the board of trustees or under its direction at any time within one year after default, upon furnishing satisfactory evidence that he is in good health, and by paying all arrearages, and all assessments, dues and other sums of money which he would have been called upon to pay had he continued to be a member,

with interest at the rate of six per cent. per annum from the dates the respective payments become due.

SEC. 6. Method of making assessments and notice thereof.—All assessments upon the members for the payment of death losses shall be made by resolution of the board of trustees, and thereupon a statement or notice shall be prepared which shall truly state the cause and purpose of such assessment and showing the name and residence of the deceased member, as it appears upon the books or records of the company, the date of his death, and the number of memberships then held by him and the amount thereof, A copy of said statement or notice showing the amount due from him on account thereof, with request to pay the same, shall be served on each member by said company, and such service may be either -ersonal or by mail; and if by mail, the mailing of such statement or notice by said company to the address of such member as it appears upon the books or records of this corporation, shall constitute a sufficient demand for the payment of such assessment, and the same
589 shall be paid within thirty days after such demand.

In case of the death of any member, or of the final termination of his membership by default in making any required payment, the board of trustees may at such time or times and in such manner as said board deems best for the welfare of the members of this class, as a whole, use his deposit in the guaranty trust fund to pay death losses; and such use shall not work a payment of any assessment against or any other required contribution by such defaulted member. Until so used, the amount of such deposit may be carried to the credit of the members of this class and held in the mortuary fund or mortuary reserve fund.

SEC. 7. Fiscal year—Annual statement—Payment of annual dues—Vouchers.—The fiscal year of this company shall commence on the first secular day of September in each year. The annual dues of each member shall be paid to this company at its office in St. Paul, in the State of Minnesota (or at the proper depository for it), on or before the last secular day of September in each year, and without demand therefor. It shall be the duty of the company to furnish each member proper vouchers for each payment of annual dues, as well as for each payment of a mortuary assessment, to be executed under and according to the by-laws.

During September in each year the secretary of this company shall, without unnecessary delay, cause to be prepared and mailed to each member a statement showing: First, the amount of
590 insurance in force at the beginning of the current fiscal year; second, the amount of the assets then on hand, either in money or in bonds, or other securities, and how much in each; third, the number and amount of death losses, if any, sustained and then unpaid, and all other statements and information required by law.

SEC. 8. Mortuary assessments—When made.—Unless and until otherwise ordered by the board of trustees, mortuary assessments shall be made only on the first secular days of April, July and

December in each year, and then by special resolution of the board of trustees. Provided, however, said board of trustees may, by resolution, whenever, and as often as in their discretion it shall be necessary, order and make mortuary assessments upon the members to pay death losses.

SEC. 9. Receipts for payments.—Mailing thereof.—The secretary shall furnish receipts to members for annual dues and mortuary assessments. The same, when mailed to the members to their address as it appears on the books or records of this company, shall be sufficient.

SEC. 10. Change of beneficiary.—No change in the beneficiary named in any certificate of this company shall be made or allowed without the written request of such member, as is herein specified, for a change of beneficiary, having been first filed with the secretary of said company, together with the approval of the board of trustees endorsed on such certificate or upon said written request.

Whenever any member shall make and file with the secre-
591 tary of this company a written request for a change in the beneficiary who is to receive the money provided to be paid in any such certificate, and when the approval and consent of the board of trustees shall have been given to such request by endorsement on such certificate or upon said written request for said change, such member shall then have the right to change the beneficiary named in his certificate and designate a new beneficiary, and the beneficiary so last appointed and designated in writing and endorsed on such certificate or written request shall be the person or beneficiary who shall receive and be entitled to the money named in such certificate.

All requests for any change in the beneficiary named in any certificate of this company shall be witnessed by at least two witnesses to the member's signature, and the same shall be executed and acknowledged before some notary public or other officer who is duly authorized to administer oaths.

SEC. 11. General powers of board of trustees.—Except as otherwise in this article or elsewhere in these by-laws provided, the board of trustees may adopt any rules, regulations and methods for the promptr, orderly and efficient transaction of its business with, or pertaining to, this class of members.

SEC. 12. This article only applies to class A.—The several sections and provisions of this article of the by-laws shall only apply to the members of class A and to the company, itd officers and the board of trustees in their dealings with and in relation to the members of said class.

592 ARTICLE VI.

General Provisions.

SECTION 1. Change of beneficiaries.—Except as in these by-laws or in the certificate of membership or policy otherwise provided, the beneficiary or beneficiaries under any certificate of membership or

policy may be changed by the member at any time during the continuance or life of the certificate or policy, provided the certificate is not already assigned, by filing with the company a written request, duly acknowledged, accompanied by the certificate of membership or policy, for endorsement of change, but such change shall not take effect until the endorsement thereof on the certificate of membership or policy by the proper officer of the company.

The member may, however, resign this right to change the beneficiary, either temporarily or permanently, by filing with the company a written waiver of such right, duly acknowledged and accompanied by the certificate of membership or policy.

SEC. 2. Mailing notices, affidavits, etc.—Except as in the articles of incorporation, or in these by-laws otherwise expressly provided, any and all notices of whatsoever nature in any way required to be given to the members or any or either of them, the holding of any meeting or the happening of any event. In computing said twenty days' time, the day of depositing such notice as aforesaid shall be excluded, and the date specified in the notice for the making
593 of any payment the performance of any act by the members, or any or either of them, the holding of any meeting, or the happening of any event, shall be excluded. Any person or persons who shall take any part in enclosing any notice in a wrapper, in addressing the wrapper, paying the postage thereon, or depositing any notice in said postoffice, may make an affidavit, before a notary public, or some other officer authorized to take affidavits or administer oaths, setting forth facts showing what part such person or persons took therein; and said affidavit or affidavits shall be filed and preserved by the secretary of the company, and shall be and constitute *prima facie* evidence of the facts or matters therein set forth in all future dealings between the company and its members and in all future actions or proceedings in any and all courts of law or equity to which the company and the members or any or either of them shall be parties, or in which they or any or either of them shall be interested.

SEC. 3. Payments.—Where to be made.—Except as otherwise provided, all assessments, premiums and other payments to be made to the company shall be made at the home office or at such other places and to such persons as shall from time to time be designated.

SEC. 4. Current expenses.—This corporation shall have no capital stock, and all membership fees and annual dues shall be used towards defraying its current expenses and to increase its efficiency
594 and protective capacity, and the residue thereof if any, may be used to pay death losses.

SEC. 5. Corporate seal.—The corporate seal of this company shall be the words, "Corporate seal," encircled with the words, "The Bankers' Life Association of Minnesota."

SEC. 6. Application of by-laws.—Except as in these by-laws otherwise expressly provided, each and all of the provisions of the by-laws shall apply to each and all of the members of the company.

SEC. 7. Amendments, etc.—These by-laws or any or either of them

may be repealed, modified, altered or amended by the affirmative votes of four or more trustees at any meeting of the board duly and regularly held.

595 EXHIBIT "E."

"Resolved, That the Bankers Life Association of Minnesota hereby authorizes and declares its reincorporation, and does hereby reincorporate under and by virtue of chapter one hundred and seventy-five (175), as amended, of the General Laws of the State of Minnesota for the Year Eighteen hundred and ninety-five entitled 'An act to revise and codify the insurance laws of the State;' and to that end does hereby adopt the following articles of incorporation, in lieu of, and as a substitute for, any and all articles of incorporation, heretofore existing viz:

ARTICLE I.

The future corporate name of this corporation is the Minnesota Mutual Life Insurance Company.

ARTICLE II.

The location and home office of the company is and shall be in the city of Saint Paul, State of Minnesota.

ARTICLE III.

This company is re-incorporated for the purpose of transacting and it proposes, upon the mutual plan to transact, the business of, and to make, insurance upon the lives of individuals, and every insurance appertaining thereto or connected therewith; to grant, purchase or dispose of annuities and endowments of any kind whatsoever; and to take risks, and insure, against accident to or
596 sickness of persons.

It is proposed and intended that the duration and continuance of this corporation and its corporate powers shall be perpetual, and that it shall have perpetual succession.

ARTICLE IV.

By-laws not in conflict herewith or with the law, may be adopted and from time to time amended, repealed or abrogated in whole or in part, by the board of trustees.

ARTICLE V.

Except as herein otherwise expressly provided, all of the corporate powers of the company shall be exercised and the amount of compensation of officers and trustees shall be regulated, by a board of trustees, and authority is vested in the board of trustees to appoint, and delegate power to, such officers, servants and agents as said board shall by resolution or by-laws determine.

ARTICLE VI.

The board of trustees shall consist of at least five persons, and may consist of a greater number, if the by-laws shall at any time so provide.

All of the members of the board of trustees shall be residents and citizens of the State of Minnesota, until such time as the by-laws otherwise provide.

The names of the members of the present board of trustees are Charles H. Bigelow, Maurice Auerbach, John B. Sanborn, Crawford Livingston and J. F. R. Foss.

597 ARTICLE VII.

The first meeting of members hereafter shall be held at three o'clock in the afternoon on the first Tuesday in March, A. D. nineteen hundred and two at the home office of the company; provided, that a special meeting, or special meetings of members may be held prior to said date upon due notice.

ARTICLE VIII.

The regular annual meeting of members shall be held at three o'clock in the afternoon on the first Tuesday in March of each year, at the home office, for the election of trustees, whenever any are to be elected, and for the transaction of such other business as may properly come before it.

ARTICLE IX.

Article ten of these articles relates solely to a guaranty trust fund heretofore created by the deposits of members who became such under the assessment plan.

ARTICLE X.

All amounts pledged to this company to secure payment of assessments occasioned by death of its members shall be used only for that purpose, and meanwhile the same shall be and remain invested in United States registered bonds, and shall be transferable or convertible only upon resolution of its board of trustees, and such board shall have the exclusive charge and control thereof.

598 All interest realized from such bonds shall meanwhile be used to defray the company's operating expenses.

This article shall never be amended or in any way at all changed without the consent of every member of this company, to be given in writing, signed by him and filed with the company's secretary, and reciting in full the proposed amendment or change.

ARTICLE XI.

These articles may be amended at any time to any extent, not in violation of law, by resolution adopted by a two-thirds vote of all

the votes cast by the members at any special meeting lawfully called for that purpose, or by such two-thirds vote, at any regular meeting of the members."

599 EXHIBIT "F."

BY-LAWS.

ARTICLE I.

SECTION 1. The annual meeting of members shall be held at the time and place designated by the articles of incorporation.

SECTION 2. The board of trustees, or the president and two trustees, may call a special meeting of members at any time, and the secretary shall give notice thereof by causing to be mailed to each member, at his address then appearing on the books of the company, a notice of the time, place and object of such meeting, at least thirty days before the date set for the same.

SECTION 3. Every person insured by this company will be a member entitled to one vote, and one vote additional for each one thousand dollars of insurance in excess of the first one thousand dollars.

SECTION 4. Any member may vote by proxy, at any meeting of members, provided the proxy appointment shall be in writing, and shall be filed with the company and the filing noted on the company's books at least five days before the meeting at which it is to be used.

SECTION 5. Insurance to an amount not less than $500,000 represented in person or by proxy, or partly in person and partly by proxy shall constitute a quorum at any meeting of members.

600 ARTICLE II.

SECTION 1. Nominations for the office of trustee shall be made before voting for that office commences. Votes for persons not so nominated shall be wholly disregarded. The election of each trustee shall be by ballot, and a plurality of the votes cast shall elect.

SECTION 2. The board of trustees shall consist of seven persons, and shall be divided into seven classes, with one person in each class.

Each member of the present board of trustees shall hold office until the next annual meeting of the members. The present board may elect two additional members who shall hold office until the next annual meeting.

At the next annual meeting of members to be held on the first Tuesday in March 1902, seven trustees representing and constituting said seven classes shall be elected; and the first term of office of the respective members of the several classes, counting from the date of said annual meeting, shall be as follows, viz: one class one year; one class two years; one class three years; one class four

years; one class five years; one class six years and one class seven years, and until their respective successors are elected and qualified. Thereafter and as each of said terms expires, the next term and each succeeding term of office of each trustee shall be seven years, counting from the annual meeting at which the election occurred, or should have occurred.

601 Any vacancy in the office of trustee may be filled by the board for the unexpired term.

The board of trustees shall elect a chairman from their number to preside at board meetings and perform such other duties as he may assume at the board's request. In the absence of the chairman the board may elect a temporary chairman.

SECTION 3. A regular meeting of the board of trustees shall be held at the home office of the company, on the first Monday of each month, and the annual meeting thereof, on Wednesday next following the first Tuesday in March of each year, at three o'clock in the afternoon.

SECTION 4. Special meetings of the board of trustees may be held at any time upon call of the secretary, of his own motion, or at the request of the president, or upon the written request of two trustees. The secretary shall cause a notice of such meeting to be mailed to each member of the board, at his address appearing on the records of the company, or left at his residence, or at his place of business, or delivered to him in person. Such notice, if by mail, shall be deposited in the post-office, or in a United States mail box, in the city of Saint Paul, at least seventy-two hours, or if by leaving at the residence or place of business shall be so left at least twenty-four hours, or if personal, shall be delivered at least six hours,—prior to the time specified for the meeting

SECTION 5. Except as herein otherwise Iprovided any number of trustees, not less than one half of a full board shall constitute

602 a quorum for the transaction of business at any meeting.

ARTICLE III.

SECTION 1. The officers shall be president, secretary, medical director and general counsel, and whenever the board of trustees shall so determine, one or more vice-presidents, assistant secretaries, assistant medical directors and assistant counsel, and any other officer or officers the board of trustees by resolution shall designate.

Officers may be elected at any annual, or at any regular monthly meeting of the board of trustees; *Provided* That any vacancy may be filled at any special meeting called for that purpose.

The respective terms of office of the several officers shall be determined from time to time by resolution of the board of trustees.

SECTION 2. The president shall preside at all meetings of the members. The vice-presidents shall respectively and in the order of priority, unless otherwise provided by the board of trustees, perform the duties of president during his absence. The secretary shall keep a record of all of the meetings of the board of trustees.

The assistant secretaries shall respectively and in the order of priority, unless otherwise provided by the board of trustees perform the duties of secretary during his absence. The medical director shall examine all applications for insurance and approve or disapprove the same in writing. The assistant medical directors shall
603 respectively and in the order of priority, unless otherwise provided by the board of trustees, perform the duties of the medical director during his absence.

The several officers whether herein specially mentioned or not, shall also have such powers and perform such duties and be subject to such liabilities and restrictions as the board of trustees shall by resolution provide.

ARTICLE IV.

SECTION 1. To the extent necessary to protect and continue the rights and privileges of any member holding a mortuary assessment certificate and to preserve and secure the fulfillment of all contract obligations to him, and to continue and perpetuate in the company the power and authority to levy assessments, and to do and perform all and everything necessary or expedient to enable it to carry out the mortuary assessment contracts in accordance with the terms thereof, and with the law and pre-ent by-laws in such case made and provided, the present and existing by-laws shall continue in full force and effect.

SECTION 2. The corporate seal of this company shall be the words "Corporate seal," encircled with the words, "The Minnesota Mutual Life Insurance Company."

SECTION 3. By the affirmative vote of a number of trustees equal to a majority of a full board, these by-laws or any part thereof, may be amended repealed or abrogated.

SECTION 4. Except as herein or by law otherwise provided, all existing by-laws are hereby repealed.

604 (Endorsed:) Answer. Filed January 6th, 1902. Henry D. Lang, clerk.

605 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs,

vs.

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

The clerk will please enter our appearance for the following defendants in the above entitled action: The Minnesota Mutual Life

Insurance Company, formerly The Bankers Life Association of Minnesota, C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke and J. F. R. Foss, trustees of the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota.

Respectfully,

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants, 31 to 35 St. Paul Fire & Marine Building, St. Paul, Minnesota.

(Endorsed:) Notice of appearance for defendants. Filed Nov. 4th, 1901, Henry D. Lang, clerk. By Louise B. Trott, deputy.

606 United States Circuit Court, District of Minnesota. Chancery Rule Register.

1901, Nov. 4.—

J. C. IVERSEN ET AL.
vs.
MINNESOTA MUTUAL LIFE INS. CO. ET AL.

And now come the defendants by How Taylor and Mitchell, solicitors, on whose motion it is ordered that the appearance of said defendants be, and the same hereby is entered.

Chancery Common Rule Register "B" page 76

607 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Alber- H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

Answer of Defendants to the Interveniug Complaint of Esdras B. Trubey.

And now come the defendants above named, and for their joint and several answer to the intervening complaint of Esdras B. Trubey, admit that the said Trubey is a citizen and resident of the city of Chicago, county of Cook and State of Illinois; admit that he is a member in good standing of The Minnesota Mutual Life Insurance Company, defendant above named, and the holder of three certificates of membership numbered 17376, 17377, 17378 in defendant company, dated March 13, 1893;

Defendants further allege that under and by virtue of a contract between said Trubey and defendant company, and the articles and by-laws of defendant company, there became due and owing from the said Trubey to the defendant company, as dues under
608 his three certificates of membership aforesaid, the sum of eighteen dollars ($18.00), which said sum became due and owing on the first day of September, 1901;

That it was further provided by the articles and by-laws of defendant company, and by the terms of the contract between said Trubey and defendant company that unless said sum of eighteen dollars ($18.00) should be paid on or before September 30, 1901, said Trubey should cease to be a member of defendant company, and his said certificates of membership should thereupon become null and void.

That the said Trubey failed and neglected to pay said sum of eighteen dollars ($18.00) due as aforesaid, and by reason thereof his membership in defendant company ceased and determined on the 30th day of September, 1901;

That thereafter and on or about the 10th day of October, 1901, the said Trubey applied for reinstatement in the defendant company, and the said Trubey was on said 10th day of October, 1901, reinstated as a member of defendant company, and he thereupon paid the said sum of eighteen dollars ($18.00) to defendant company, due as aforesaid;

That said application for reinstatement was made by said Trubey and said sum so paid by him, with full knowledge and information in regard to the management and conduct of the defendant company, and with full knowledge and information of the re-organization of defendant company in August, 1900, and with full knowledge of all matters relating to the management and conduct of the affairs of defendant company.

609 Defendants further re-allege and re-affirm all statements and allegations contained in the answer heretofore filed in the above entitled cause.

Wherefore, they pray that the petition of said Esdras B. Trubey be dismissed hence with costs.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Timothy R. Palmer being first duly sworn deposes and says that he is the president of The Minnesota Mutual Life Insurance Company, the defendants above named; that he has read the foregoing answer, and that the s-me is true of his own knowledge, excepting as to those matters therein stated upon information and belief, and that as to those matters he believes it to be true.

T. R. PALMER.

Subscribed and sworn to before me this 15th day of February, 1902.

J. W. DOOLITTLE, [SEAL.]
Notary Public, Ramsey County, Minn.

(Endorsed:) Answer to intervening complaint of E. B. Trubey. Filed February 17th 1902. Henry D. Lang clerk.

610 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants. } Order.

This matter having come on to be heard this 16th day of December, 1901, at ten (10) o'clock in the forenoon, at the Federal court house in the city of St. Paul, Minnesota, before the Honorable William Lochren, judge of the above court, upon the motion of the defendants for an order requiring the plaintiffs to furnish security for costs; and it appearing that due notice of this motion has been given to plaintiffs, and Messrs. William D. Mitchell and T. R. Palmer appearing for the defendants and John F. Byers Esq., appearing for the plaintiffs and it appearing to the court that neither of the plaintiffs above named are residents of the State of Minnesota, and
611 that the nature of the issues in this case is such that a large amount of testimony will have to be taken, and that the costs and disbursements of the defendants will amount to a large sum;

Now, upon the motion of Messrs. How, Taylor & Mitchell, solicitors for the defendants, and upon the files, records and proceedings in this cause,

It is ordered that the plaintiffs above named file with the clerk of this court a bond in the penal sum of seven hundred & fifty dollars ($750), conditioned to pay the costs and disbursements which may be awarded to the defendants or either of them in the above entitled cause; said bond shall have two or more sureties to be approved by this court, who shall be residents and freeholders of the State of Minnesota, each worth at least the amount of said bond over and above his just debts and liabilities and properrty exempt from execution. The defendants shall have six (6) days after written notice of the filing of said bond, in which to file exceptions to the sufficiency of the sureties thereon, and in case such exceptions are filed said sureties shall be required to appear in person and justify

before the court. In case a surety company in good standing and duly authorized to do business in the State of Minnesota becomes a surety on said bond, then no other surety shall be required. If the said plaintiffs shall fail to file such bond within seventeen days from the date hereof, or of said sureties shall fail to
612 appear and testify before the court when required so to do, then the bill of complaint in the above cause shall be forthwith dismissed without other or further notice to the plaintiffs.

This order is made without prejudice to the right of the defendants to move for further security when that herein provided shall be exhausted.

Dated December 16, 1901.

WM. LOCHREN, *Judge.*

(Endorsed :) Order to compel plaintiffs to furnish security. Filed December 16th, 1901 Henry D. Lang, clerk.

613 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Fos:, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

Know all men by these presents that we, J. C. Iversen and Samuel Wright as principals, and The Fidelity and Deposit Co. of Maryland, a corporation, as surety, are held and firmly bound to the defendants above named, in the sum of seven hundred and fifty dollars ($750), lawful money of the United States, for which payment we jointly and severally bind ourselves our heirs, executors, administrators or successors, firmly by these presents.

Sealed with our seals and dated this 30 day of December, 1901.

The condition of this obligation is such that if the plaintiffs above named shall well and truly pay or cause to be paid all costs adjudged against them in this action, then this obligation shall be void, otherwise to remain in full force.

614 In testimony whereof, we have hereunto set our hands and affixed our seals, this 30 day of December, 1901.

J. C. IVERSEN,
SAM'L WRIGHT,
By JOHN F. BYERS, *Counsel.* [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By O. M. METCALF,
A Member of the Local Board of Directors for Minnesota.

Attest: WM. M. CARSON, *Agent.*

Signed sealed and delivered in presence of—
H. H. FULLER,
H. McALLISTER,
(As to surety).

STATE OF MINNESOTA, }
County of Ramsey. }

On this 30 day of December 1901, before me a notary public within and for said county, personally appeared John F. Byers known to me to be counsel for J. C. Iversen and Samuel Wright the principals named in the foregoing bond, to me known to be the person described in, and who executed the foregoing and within instrument, and acknowledged that he executed the same as their and his free act and deed.

H. H. FULLER,
Notary Public, Ramsey County, Minnesota.

615 STATE OF MINNESOTA, }
County of Ramsey, } *ss:*

On this 30th day of November, A. D., 1901, personally appeared before me O. M. Metcalf who being duly sworn deposes and says, that he is a member of the local board of directors for Minnesota of the Fidelity and Deposit Company of Maryland, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and the said O. M. Metcalf acknowledged said instrument to be the free act and deed of said corporation.

H. H. FULLER, [SEAL.]
Notary Public, Ramsey County, Minn.

(Endorsed:) Bond for costs Filed. January 2, 1902. Henry D. Lang. clerk. by Louise B. Trott. deputy.

The within bond and the surety thereon approved this 30 day of Dec. 1901.

WM. LOCHREN, *Judge.*

616 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, *et al.* } C. Equity. 783.

Be it known that I, the undersigned Samuel Wright, one of the above named complainants, and that I, the undersigned Esdras B. Trubey, one of the complainants in the above entitled cause, do hereby, each for himself, ratify and confirm all that my attorney and counsel in the above entitled cause, John F. Byers, has done in executing for each of us, jointly and severally, a bond for costs in said above cause, for the sum of seven hundred fifty dollars, on March 20, 1902.

Witness our hands and seals this 27 day of March A. D. 1902.

SAM'L WRIGHT. [SEAL.]
ESDRAS B. TRUBEY. [SEAL.]

STATE OF WISCONSIN, } ss:
Milwaukee County, }

Personally appeared before me, Samuel Wright, known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledged that he signed said instrument
617 for the purpose therein set forth, this 27th day of March A. D. 1902.

[SEAL.] WILLIAM MILLARD,
Notary Public.

My commission expires Aug. 22, 1904

STATE OF ILLINOIS, } ss:
County of Cook, }

Personally appeared before me, Esdras B. Trubey, known to me to be the same person whose name is subscribed to the foregoing instrument, and acknowledged that he signed said instrument for the purpose therein set forth, this 26th day of March, A. D. 1902.

A. H. MACDIARMID,
[SEAL.] *Notary Public.*

(Endorsed:) Complainants' ratification of execution of bond for costs. Filed April 4th, 1902. Henry D. Lang, clerk.

618 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerl*t* the Bankers Life Association of Minnesota, Defendants.

To Howe, Taylor and Mitchell, attorneys for the defendants above named, and to their counsel, T. R. Palmer, Esq.,

Please take notice: That on Monday, the 27th day of January, 1902, at 10 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, the plaintiffs will move said court at the chambers of said court in the Federal building in the city of St. Paul, Ramsey county, Minnesota, for an order making the persons named in the petition of plaintiffs' and the affidavit of John F. Byers, their counsel, copies of which are hereto attached, parties plaintiff in the above entitled action.

Said motion will be made on the said affidavits and peti-
619 tion and upon all the files in said matter and upon the ground that said persons are proper parties plaintiff herein.

J. C. IVERSON &
SAMUEL WRIGHT, *Plaintiffs*,
By JOHN F. BYERS,
Their Counsel.

620 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Plaintiffs,
versus
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

C. Equity. No. 783. Petition of J. C. Iversen and Samuel Wright.

To the honorable judges of the circuit court of the United States of America for the district of Minnesota, in chancery sitting:

Your petitioners, J. C. Iversen and Samuel Wright, who are the complainants in the above wentitled cause, respectfully represent that the parties whose names are hereinafter set forth are each of the- members of and holders of membership certificates in the Bankers Life Association of Minnesota, reorganized as the defendant corporation, and citizens and residents of the places hereinafter stated opposite the respective names of said parties, and that said parties have each of them an interest in the subject matter of said suit, and in the relief prayed for by petitioners in their original bill herein and amendment thereto in favor of themselves and all other members of the Bankers Life Association of Minnesota, reorganized as the defendant corporation herein, wherever residing or located
621 in the United States of America, whom your honors may permit to join in said suit, and who will contribute to the expense of same, and that said parties have each of them the same cause of action against the defendants and each of them, as have your petitioners, the aforesaid complainants as particularly set forth in their said original bill and amendment thereto as aforesaid.

Your petitioners further represent that powers of attorney have been given to Dillon and Goetz and John F. Byers, the solicitors and counsel of your petitioners, the aforesaid complainants herein, by said parties to represent them in said above styled suit; and that they be made parties complainants to said suit is desired by said proposed parties complainants, the names and description of each of whose membership in said The Bankers Life Association of Minnesota, reorganized as defendant corporation, together with their respective residence is as follows:

Name.	Number of certificate.	Date issued.	Residence.
Henry Arnstein	22284	Jul- 22, 1895	Milwaukee, Wisconsin.
Frank H. Feidler	19426		Milwaukee, Wisconsin.
Ignatz Morawetz			Milwaukee, Wisconsin.
Henry Kuenzli	14422	Sep. 13, 1892	Milwaukee, Wisconsin.
Thomas Neacy	20986	Dec. 29, 1894	Milwaukee, Wisconsin.
	20987	Dec. 29, 1894	
	20988	Dec. 29, 1894	
Walter Read	20983	Dec. 29, 1894	Milwaukee, Wisconsin.
	20984	Dec. 29, 1894	
	20985	Dec. 29, 1894	
622 E. M. Oberndorfer	25430	Sep. 22, 1897	Milwaukee, Wisconsin.
	25431	Sep. 22, 1897	
Charles Schuster	22289		Milwaukee, Wisconsin.
	25790	Dec. 11, 1897	
Julius Schuster	35312	Aug. 11, 1897	Milwaukee, Wisconsin.
Frank W. Suelflow			Milwaukee, Wisconsin.
Henry W. Chandler	19726	Apr. 24, 1894	St. Louis, Missouri.
Whately L. Chandler	19725	Apr. 1894	St. Louis, Missouri.
Albin Mellier	20456	Oct. 16, 1894	St. Louis, Missouri.
	20457	Oct. 16, 1894	
	20458	Oct. 16, 1894	
Ernest Preisler			St. Louis, Missouri.
Jacob Meyer	20864	Dec. 14, 1894	St. Louis, Missouri.
	20865	Dec. 14, 1894	
	20866	Dec. 14, 1894	
Isaac Meyer	20861	Dec. 14, 1894	St. Louis, Missouri.
	20862	Dec. 14, 1894	
	20863	Dec. 14, 1894	
A. C. Stewart	10994	Mar. 7, 1892	St. Louis, Missouri.
	10995	Mar. 7, 1892	
	10996	Mar. 7, 1892	
William Steinhoff	19168	Jan. 4, 1894	St. Louis, Missouri.
	19169	Jan. 4, 1894	
	19170	Jan. 4, 1894	
Thomas K. McLemore			St. Louis, Missouri.
Otto Diedrichs	20677	Nov. 23, 1894	Chicago, Illinois.
	20678	Nov. 23, 1894	
	20679	Nov. 23, 1894	
Albert B. Faunce	14042	Nov. 23, 1894	Chicago, Illinois.
William H. Harper			Chicago, Illinois.
623 Ludmil Kandlik	22520	Sep. 24, 1895	Chicago, Illinois.
	22541	Sep. 26, 1895	
James Henry Lewis	23140	Dec. 24, 1895	Chicago, Illinois.
	23146	Dec. 26, 1895	
	23147	Dec. 26, 1895	
Siegfried Mautner			Chicago, Illinois.
John A. Pinkerton	25764	Dec. 4, 1897	Chicago, Illinois.
John P. Von Lackum	13804	Aug. 3, 1892	Chicago, Illinois.
Frederick Oberndorf	22340		Chicago, Illinois.
William H. Gold	4648	Dec. 29, 1886	Nelson, B. C.
Robert J. Patton			Cincinnati, Ohio.
Frank Bloom	21997	June 6, 1895	Cincinnati, Ohio.
William Dearness	19933	Jun- 18, 1894	Cincinnati, Ohio.
Moritz Steude	24337	Oct. 15, 1896	Milford, Massachusetts.

Name.	Number of certificate.	Date issued.	Residence.
H. G. Tischer	21339	Feb. 25, 1895	Akron, Ohio.
	21340	Feb. 25, 1895	
	21341	Feb. 25, 1895	
John Schuette	7252	Apr. 3, 1890	Manitowoc, Wisconsin.

Wherefore the petitioners pray that by an order of this court, the parties aforesaid may be allowed to come in and be made parties complainant in said above entitled cause with the said complainants J. C. Iversen and Samuel Wright upon condition that said proposed parties complainant bear their ratable share of the costs, expenses and attorneys' fees of said suit, incurred and to be incurred, in proportion to the amount to be recovered under decree of
624 this court in accordance with the prayer of the original bill and amendment thereto, in said above entitled cause, to be settled by the clerk or otherwise ascertained and allowed by the court, and for such other and further relief as to the court shall seem proper.

J. C. IVERSEN.
SAM'L WRIGHT.

DILLON & GOETZ,
Solicitors for Complainants.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

J. C. Iversen on oath states that he is one of the petitioners named in the foregoing petition and that he has heard the same read and knows the contents thereof. That the matters and things in said petition contained are true of his own knowledge except as to those matters that are therein stated to be on his information and belief and as to those matters he believes them to be true.

J. C. IVERSEN.

Subscribed and sworn to before me this 2nd day of January A. D. 1902.

[SEAL.] THEODORE RICHTER,
Notary Public, Whose Commission Will Expire on Nov. 14th, 1903.

625 STATE OF WISCONSIN, } ss:
Milwaukee County, }

Samuel Wright on oath states that he is one of the petitioners named in the foregoing petition and that he has heard the same read and knows the contents thereof. That the matters and things in said petition contained are true of his own knowledge except as to those matters that are therein stated to be on his information and belief and as to those matters he believes them to be true.

SAM'L WRIGHT.

Subscribed and sworn to before me this 2nd day of January A. D. 1902.

[SEAL.] THEO. RICHTER,
Notary Public, Whose Commission Will Expire Nov. 14th, 1903.

626 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants,
versus
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

C. Equity. No. 783. Affidavit of John F. Byers.

John F. Byers being first duly sworn, upon oath says that he is counsel for the complainants in the above entitled suit.

That the parties hereinafter named are non-resident holders of membership certificates in The Bankers Life Association of Minnesota reorganized as The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, who have each duly authorized Dillon and Goetz and this affiant as solicitors and counsel, to enter their respective appearances as parties complainant in the aforesaid suit.

This affiant states that each of the parties whose names are herein set forth has an interest in the subject matter of the above entitled suit and in obtaining the relief demanded by the complain-
627 ants, and that the following is the name of each holder of certificate, date when his certificate was issued and residence

of such holder of certificate, as shown by their respective powers of attorney, authorizing said Dillon and Goetz and this affiant John F. Byers, solicitors and counsel in aforesaid cause to join each of said certificate holders respectively as a party to this suit.

Name.	Number of certificate.	Date issued.	Residence.
Henry Arnstein	22284	Jul- 22, 1895	Milwaukee, Wisconsin.
Frank H. Fiedler	19426	.....	Milwaukee, Wisconsin.
Ignatz Morawetz	.....	.....	Milwaukee, Wisconsin.
Henry Kuenzli	14422	Sep. 13, 1892	Milwaukee, Wisconsin.
Thomas Neacy	20986	Dec. 29, 1894	Milwaukee, Wisconsin.
	20987	Dec. 29, 1894	
	20988	Dec. 29, 1894	
Walter Read	20983	Dec. 29, 1894	Milwaukee, Wisconsin.
	20984	Dec. 29, 1894	Milwaukee, Wisconsin.
	20985	Dec. 29, 1894	
E. M. Oberndorfer	25430	Sep. 22, 1897	Milwaukee, Wisconsin.
	25431	Sep. 22, 1897	
Charles Schuster	22289	.....	Milwaukee, Wisconsin.
	25790	Dec. 11, 1897	
Julius Schuster	35312	Aug. 11, 1897	Milwaukee, Wisconsin.
Frank W. Suelflow	.....	.....	Milwaukee, Wisconsin.
Henry W. Chandler	19726	Apr. 24, 1894	St. Louis, Missouri.
Whately L. Chandler	19725	Apr. 24, 1894	St. Louis, Missouri.
Albin Mellier	20456	Oct. 16, 1894	St. Louis, Missouri.
	20457	Oct. 16, 1894	
	20458	Oct. 16, 1894	
628 Ernest Preisler	.....	.....	St. Louis, Missouri.
Jacob Meyer	20864	Dec. 14, 1894	St. Louis, Missouri.
	20865	Dec. 14, 1894	
	20866	Dec. 14, 1894	
Isaac Meyer	20861	Dec. 14, 1894	St. Louis, Missouri.
	20862	Dec. 14, 1894	
	20863	Dec. 14, 1894	
A. C. Stewart	10994	Mar. 7, 1892	St. Louis, Missouri.
	10995	Mar. 7, 1892	
	10996	Mar. 7, 1892	
William Steinhoff	19168	Jan. 4, 1894	St. Louis, Missouri.
	19169	Jan. 4, 1894	
	19170	Jan. 4, 1894	
Thomas K. McLemore	.....	.....	St. Louis, Missouri.
Otto Diederichs	20677	Nov. 23, 1894	Chicago, Illinois.
	20678	Nov. 23, 1894	
	20679	Nov. 23, 1894	
Albert B. Faunce	14042	Aug. 24, 1892	Chicago, Illinois.
William H. Harper	.....	.....	Chicago, Illinois.
Ludmil Kandlik	22520	Sep. 24, 1895	Chicago, Illinois.
	22541	Sep. 26, 1895	
James Henry Lewis	23140	Dec. 24, 1895	Chicago, Illinois.
	23146	Dec. 26, 1895	
	23147	Dec. 26, 1895	
Siegfried Mantner	.....	.....	Chicago, Illinois.
John A. Pinkerton	25764	Dec. 4, 1897	Chicago, Illinois.
John P. Von Lackum	13804	Aug. 3, 1892	Chicago, Illinois.

Name.	Number of certificate.	Date issued.	Residence.
Frederick Oberndorf	22340		Chicago, Illinois.
William H. Gold	4648	Dec. 29, 1886	Nelson, B. C.
Robert J. Patton			Cincinnati, Ohio.
629 Frank Bloom	21997	June 6, 1895	Cincinnati, Ohio.
William Dearness	19933	Jun. 18, 1894	Cincinnati, Ohio.
Moritz Steude	24337	Oct. 15, 1896	Milford, Massachusetts.
H. G. Tischer	21339	Feb. 25, 1895	Akron, Ohio.
	21340	Feb. 25, 1895	
	21341	Feb. 25, 1895	
John Scheutte	7252	Apr. 3, 1890	Manitowoc, Wisconsin.

JOHN F. BYERS.

Subscribed and sworn to before me this 9th day of Jan., 1902.

LEON W. WHITING,
Notary Public Hennepin Co., Minn.

[SEAL.]

(Endorsed:) Motion to bring in additional parties plaintiff.

Due service of within notice of motion admitted this 13th day of Jan., 1902.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

Filed. January 15th, 1902.

HENRY D. LANG, *Clerk.*

630 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

Affidavit of William H. Gold.

STATE OF MINNESOTA, *County of Ramsey,* } *ss:*

William H. Gold being first duly sworn deposes and says that he is a resident of Redwood Falls, in the State of Minnesota, and engaged in the banking business; that he is a member of the Minnesota Mutual Life Insurance Company, formerly known as the Bankers Life Association of Minnesota, and is the person to whom certificate No. 4648, to the amount of two thous-nd dollars ($2,000.00), was issued by the said company on December 29, 1886.

This affiant further says that he is not a resident of British
631 Columbia; that the use of his name in the petition for leave to make additional parties plaintiffs in the above entitled action has been done without his consent; that he has never authorized Messrs. Dillon & Goetz or John F. Byers, or any other person to appear for him in the above entitled action, nor to make application to have his name added to the list of plaintiffs, nor has this affiant ever signed any power of attorney authorizing any person to take any action in the name of this affiant in any legal proceeding against the Minnesota Mutual Life Insurance Company.

This affiant desires and requests that his name be withdrawn and stricken out of the petition filed by John F. Byers, Esq., in the above entitled action to have additional parties made plaintiffs.

WILLIAM H. GOLD.

Subscribed and sworn to before me this 21st day of January, 1902.

WILLIAM D. MITCHELL,
Notary Public, Ramsey County, Minn. [SEAL.]

(Endorsed:) Affidavit of William H. Gold. Filed February 3rd
1902 Henry D. Lang. clerk. By Louise B. Trott. deputy.

632 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Albert H. Lindeke, Kenneth Clark, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

STATE OF ILLINOIS, } ss:
County of Cook, }

Ferderick Oberndorf, being duly sworn deposes and says that he is a resident of the city of Chicago, State and county aforesaid and is the same person named and referred to in a list of names appearing in a petition filed by the plaintiffs herein, asking that the parties named in said list of names be made additional parties plaintiff to the above entitled suit; that he gave his name and asked to be made a part- plaintiff to the above suit under the following conditions, and not otherwise, that is to say, that heretofore on or about the 1st day of Sept., A. D., 1901, he was called upon and approached by a person whose name he does not know, and has not ascertained,
633 but he, said person represented himself to be from the office of Dillon and Goetz attorneys, having an office in the city of Chicago, and being as deponent understands and believes, the attorneys of the plaintiffs in the above entitled action, and that the aforesaid party so calling upon him represented to him that the affairs of the defendant, The Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota, had been and were now being grossly mismanaged and dishonestly handled and that the rights of the policy holders were not being considered by the management of said company, and that he, deponent, was likely to lose, and would lose all of the benefits as a holder of a certificate and policy in said company, if he, said deponent, did not join the plaintiffs in their suit against the company and its trustees, and also represented to deponent that the total cost, charges and expenses incident to said litigation would not exceed to this deponent, the sum of three dollars ($3.00) and that other representations were then and there made to deponent which induced the deponent to consent to become a party plaintiff to said action; and to give a power of attorney to said attorneys Dillon & Goetz to represent him this said deponent in said suit; that since so consenting to becoming a party to said action, deponent has learned that the representations made to him as aforesaid as to

the management of the said defendant company, and as to its affairs were not true in fact and that the probable cost to him of said litigation, if he took part therein, would far exceed the
634 sum of three dollars ($3.00), and deponent because of the false representations made to him, as he now believes the same to have been, now states that he wishes to withdraw from said suit as one of the parties plaintiff thereto and to have his name withdrawn from the list of names appearing in said petition and to revoke said power of attorney; that deponent consented to become one of the parties plaintiff to said action and gave said power of attorney without duly and properly considering the facts and without being properly informed and advised and verily believes that the statements made to him by which he was so induced to become a party to said action, and execute said power of attorney, were and are false and untrue.

FREDERICK OBERNDORF.

Subscribed and sworn to before me this 18th day of January, A. D. 1902.

GEORGE B. GOODWIN,
Notary Public.

[SEAL.]

(Endorsed:) Affidavit of Frederick Oberndorf. Filed, February 3rd, 1902. Henry D. Lang. clerk. By Louise B. Trott. deputy.

635 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants, *vs.* THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.	Affidavit of Timothy R. Palmer.

Timothy R. Palmer, being first duly sworn deposes and says that he is the president of The Minnesota Mutual Life Insurance Company, the defendant above named; that of all the alleged members and certificate holders in the defendant company, whose na mesare set forth in the affidavit and petition of J. C. Iversen and Samuel Wright for an order permitting certain persons to be made addi-

tional parties plaintiff in the above entitled action, only five (5) of the alleged members whose names are contained in said petition are now members of defendant company in good standing, who have paid all assessments and premiums due defendant company under the terms of their certificates or policies; that the five persons
636 named in said petition who are now members in good standing of defendant company are the following:

Name.	Number of certificate.	Date of issue.	Residence.
Henry Kuenzli	14422	Sept. 13, 1892	Milwaukee, Wis.
William Steinhoff	19168 19169 19170	Jan. 4, 1894	St. Louis, Mo.
Frederick Oberndorf	22340	July 31, 1895	Chicago, Ill.
William H. Gold	4648	Dec. 29, 1886	Redwood Falls, Minn.
John Schuette	7252	Apr. 3, 1890	Manitowoc, Wis.

That each and every one of the other persons named in said petition, whom plaintiffs herein desire to be made additional parties plaintiff, have ceased to be members of the defendant company, and the membership of each and every of said persons except the five above mentioned has ceased *nad* determined through failure to pay to defendant company the assessments or premiums due from time to time under the terms of their respective certificates of membership or contracts of insurance;

The following is a true and correct list of the persons named in said petition whose memberships and certificates of membership and contracts of insurance with defendant company have lapsed and determined through failure to pay the premiums and assessments due as aforesaid; that after the name of the respective persons as hereinafter set forth is placed the date on or before which the respective premiums or assessments due to defendant company should have been paid in order to prevent the said memberships from
637 lapsing, and the dates so set after the respective names are the respective dates on which the memberships of the various persons named in said petition ceased and determined; that in every case the termination and lapse of said respective memberships was caused by the failure of said person to pay to defendant company the assessmnets or premiums required to be paid by the terms of their respective contracts of insurance, and by the provisions of the articles and by-laws of defendant company; that in each case due notice of said assessments or premiums where required by the articles and by-laws of defendant company was given to said persons; the following is said list.

Certificate holder.	Number of certificate.	Date of issue.	Date of lapse or failure to pay assessment.	Residence.
Henry Arnstein	22284	Jul- 22, 1895	Sep. 30, 1901	Milwaukee, Wis.
Frank H. Fielder	19426	Feb. 27, 1894	May 1, 1901	Milwaukee, Wis.
Ignatz Morawetz	16651	Jan. 26, 1893	Jan. 2, 1901	Milwaukee, Wis.
Thomas J. Neacy	20986	Dec. 29, 1894	July 31, 1901	Milwaukee, Wis.
	20987	Dec. 29, 1894	Jul- 31, 1901	
	20988	Dec. 29, 1894	Jul- 31, 1901	
Walter Read	20983	Dec. 29, 1894	Jul- 31, 1901	Milwaukee, Wis.
	20984	Dec. 29, 1894	Jul- 31, 1901	
	20985	Dec. 29, 1894	Jul- 31, 1901	
E. M. Oberndorfer	25430	Sep. 22, 1897	Jan. 3, 1900	Milwaukee, Wis.
	25431	Sep. 22, 1897	Jan. 3, 1900	
Charles Schuster	22289	Jul- 23, 1895	Jan. 3, 1900	Milwaukee, Wis.
	25790	Dec. 11, 1897	Jan. 3, 1900	
638 Julius Schuster	25312	Aug. 11, 1897	Jan. 3, 1900	Milwaukee, Wis.
Frank W. Suelflow	25804	Dec. 14, 1897	Jan. 3, 1900	Milwaukee, Wis.
Henry W. Chandler	19726	Apr. 24, 1894	Sep. 30, 1899	St. Louis, Mo.
Whately L. Chandler	19725	Apr. 24, 1894	Sep. 30, 1899	St. Louis, Mo.
Albin Millier	20456	Oct. 16, 1894	May 2, 1900	St. Louis, Mo.
	20457	Oct. 16, 1894	May 2, 1900	
	20458	Oct. 16, 1894	May 2, 1900	
Ernest Preisler	19847	May 26, 1894	Jan. 3, 1900	St. Louis, Mo.
	19848	May 26, 1894	Jan. 3, 1900	
Jacob Meyer	20864	Dec. 14, 1894	Jan. 3, 1900	St. Louis, Mo.
	20865	Dec. 14, 1894	Jan. 3, 1900	
	20866	Dec. 14, 1894	Jan. 3, 1900	
Isaac Meyer	20861	Dec. 14, 1894	Jan. 3, 1900	St. Louis, Mo.
	20862	Dec. 14, 1894	Jan. 3, 1900	
	20863	Dec. 14, 1894	Jan. 3, 1900	
A. C. Stewart	10994	M'ch 7, 1892	Jan. 2, 1901	St. Louis, Mo.
	10995	M'ch 7, 1892	Jan. 2, 1901	
	10996	M'ch 7, 1892	Jan. 2, 1901	
Thomas J. McLemore	22410	Aug. 20, 1895	Jan. 3, 1900	St. Louis, Mo.
	22411	Aug. 20, 1895	Jan. 3, 1900	
Otto Diederichs	20677	Nov. 23, 1894	July 31, 1901	Chicago, Ill.
	20678	Nov. 23, 1894	Jul- 31, 1901	
	20679	Nov. 23, 1894	Jul- 31, 1901	
Albert B. Faunce	14042	Aug. 24, 1892	May 2, 1900	Chicago, Ill.
William H. Harper	20358	Sep. 26, 1894	May 1901	Chicago, Ill.
	20359	Sep. 26, 1894	May 1901	
	20402	Sep. 26, 1894	May 1901	
Ludmil Kandlik	22520	Sep. 24, 1895	Jan. 2, 1902	Chicago, Ill.
	22541	Sep. 26, 1895	Jan. 2, 1902	
639 James Henry Lewis	23140	Dec. 24, 1895	Jul- 30, 1898	Chicago, Ill.
	23146	Dec. 26, 1895	Jul- 30, 1898	Chicago, Ill.
	23147	Dec. 26, 1895	Jul- 30, 1898	Chicago, Ill.
Siegfried Mautner	24212	Aug. 29, 1896	May 1, 1899	Chicago, Ill.
John A. Pinkerton	25764	Dec. 4, 1897	Sep. 30, 1899	Chicago, Ill.
John P. Von Lackum	13804	Aug. 3, 1892	May 2, 1900	Chicago, Ill.
Robert J. Patton	22040	Jun- 11, 1895	Dec. 1, 1900	Cincinnati, O.
Frank Bloom	21997	Jun- 6, 1895	May 2, 1900	Cincinnati, O.
William Dearness	19933	Jun- 18, 1894	Jan. 2, 1901	Cincinnati, O.
Moritz Steude	24337	Oct. 15, 1896	Aug. 1, 1900	Chicago, Ill.
H. G. Tischer	21339	Feb. 25, 1895	May 2, 1900	Cincinnati, O.
	21340	Feb. 25, 1895	May 2, 1900	
	21341	Feb. 25, 1895	May 2, 1900	

Affiant further says that there is only one William H. Gold who is now or ever has been a member of the defendant company, or held a certificate of membership therein, and that the only William H. Gold who is now or ever has been a member of the defendant company resides at Redwood Falls, Minnesota.

TIMOTHY R. PALMER.

Subscribed and sworn to before me this 25th day of January, 1902.

WILLIAM D. MITCHELL, [SEAL.]
Notary Public, Ramsey County, Minn.

(Endorsed:) Affidavit of T. R. Palmer. Filed. February 3rd, 1902. Henry D. Lang, clerk. By Louise B. Trott, deputy.

640 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

STATE OF WISCONSIN, *Manitowoc County,* } *ss:*

John Schuette, being first duly sworn on oath, deposes and says that he is a resident of the city and county of Manitowoc, State of Wisconsin; that he is the same person referred to in the list of names appearing in a petition filed by the plaintiffs herein asking that the parties named in said list of names be made additional parties plaintiff to the above entitled action. Affiant further says that he desires to and does hereby withdraw said application to be made a party plaintiff to the above entitled action. That he declines to become a party to said action or to have anything whatsoever to do with said action, notwithstanding any paper or papers that he may have heretofore signed requesting that he may be made a
641 party plaintiff to said action; and does hereby revoke any and all powers of attorney heretofore granted by him to any and all persons whatsoever authorizing them or any of them to make him a party or cause him to be made party plaintiff to the above entitled action.

And affiant hereby requests the above entitled court to withdraw his name from the list of applicants to be made parties plaintiff to the above entitled action, and to disregard all applications by whomsoever made to the court to make him a party plaintiff to said action.

JOHN SCHUETTE.

Subscribed and sworn to before me this 24th day of January, A. D., 1902.

EMIL BAENSCH,
Notary Public, Manitowoc County, Wis.

My commission expires Dec. 4, 1905.

(Endorsed:) Affidavit of John Schuette. Filed February 3rd, 1902. Henry D. Lang, clerk. By Louise B. Trott, deputy.

642 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Complainants,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

STATE OF WISCONSIN, *County of Milwaukee,* } *ss:*

Henry Kuenzli, being first duly sworn on oath deposes and says that he is a resident of the city and county of Milwaukee, State of Wisconsin; that he is the same person named and referred to in the list of names appearing in a petition filed by the plaintiffs herein, asking that the parties named in said list of names be made additional parties plaintiff to the above entitled action. Affiant further says that heretofore, to wit: on or about the 26th day of October, 1901 A. D., he received a communication purporting to come from the office of Messrs. Dillon & Goetz, attorneys and counsellors
643 at law, having an office in the city of Chicago, Cook county, State of Illinois, who are as deponent understands|is informed and believes, the attorneys for the plaintiffs in the above entitled action, requesting that he consent to become a party plaintiff to the above entitled action; that at the same time he received from said attorneys a paper which he was asked to sign and return to them, which paper he now believes to be a request that he be made a party plaintiff to the above entitled action; that he signed and forwarded said paper to said Messrs. Dillon & Goetz, attorneys as aforesaid. That it was represented to him at the time he signed said paper that he would be responsible for only three dollars ($3.00) costs in the above entitled action.

Affiant further says that at the time he signed and forwarded the hereinbefore described paper to said Messrs. Dillon & Goetz, he did not fully understand the issues involved in the above entitled action; that said paper was signed by him under a misunderstanding and misapprehension of the real facts and circumstances attending the above entitled action and the bringing of the same and the purpose and intent thereof; that he desires to and does hereby withdraw said application by him so signed as aforesaid, and that he desires and does hereby decline to be made a party plaintiff to the above entitled action or to be in any way held responsible for

costs in said action or to have anything whatsoever to do with said action, notwithstanding any paper or papers that he may have heretofore signed requesting him to be made plaintiff to the
644 above entitled action, or any statements that he may have made to any party or parties consenting to become a party plaintiff to the above entitled action; and affiant further says that he hereby revokes any and all powers of attorney heretofore given by him to any and all persons whatsoever authorizing him or them to make him a party or cause him to be made a party plaintiff to the above entitled action.

And affiant hereby requests the above entitled and honorable court, if his name appears as party plaintiff in the above entitled action to withdraw and strike it from said case as a plaintiff and to disregard any and all applications by whomsoever made to the court to make him a party plaintiff to said action.

HENRY KUENZLI.

Subscribed and sworn to before me this 21st day of January, A. D. 1902.

JOHN F. BURKE,

[SEAL.] *Notary Public, Milwaukee County, Wis.*

My commission expires June 14th 1902

(Endorsed:) Affidavit of Henry Kuenzli. Filed. February 3rd, 1902 Henry D. Lang. clerk. By Louise B. Trott. deputy.

645 United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1902, February 3rd, 1902.

MONDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. William Lochren, judge; Hon. Milton D. Purdy, U. S. district attorney; Hon. William H. Grimshaw, U. S. marshal; Henry D. Lang, clerk.

* * * * * * *

J. C. IVERSEN and SAMUEL WRIGHT
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul *et al.* } C. Equity. No. 783.

The motion of the complainants heretofore noticed and continued for hearing to this time and place, for an order making the persons named in the petition of complainants and the affidavit of John F. Byers, Esq., their solicitor, on file herein, parties complainant in the above entitled cause, now coming on for hearing, John F. Byers, Esq., appears and argues said motion on behalf of the complainants

and William D. Mitchell, Esq., appears and argues said motion on behalf of the defendants and after hearing the arguments and statements of the solicitors for the respective parties and being fully advised in the premises, after due consideration, it is by the court ordered that said motion be and the same hereby is denied.

John F. Byers, Esq., solicitor for the complainant thereupon moves the court for an order to withdraw the name of J. C. Iversen as one of the parties complainant in this cause, which motion is after argument and due consideration by the court granted.

* * * * * * *

A true record,
Attest: HENRY D. LANG, *Clerk.*

646 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

Affidavit of Timothy R. Palmer.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Timothy R. Palmer being first duly sworn deposes and says that he is the president of The Minnesota Mutual Life Insurance Company, the defendant above named;

That on or about the 10th day of October, 1901, one day prior to the filing of the bill of complaint in the above entitled cause,
647 one Esdras B. Trubey, who is now a member of defendant company, and whose application to be admitted as a party plaintiff has been presented to this court, called at the office of said Minnesota Mutual Life Insurance Company, and had an interview with this affiant, lasting about three-quarters (¾) of an hour;

That at the time of said interview the said Trubey had ceased to be a member of defendant company, and had lost his membership therein by failure to pay the dues required by the articles and by-laws of said company to be paid before September 30, 1901.

That said Trubey called at the office of defendant company as aforesaid and applied to this affiant to be reinstated as a member of defendant company; that thereupon a long conversation followed

between this affiant and said Trubey, and this affiant explained to said Trubey at length the facts regarding the re-organization of defendant company, which took place in August, 1901, and gave to said Trubey full information in regard to the affairs and management of defendant company, and said Trubey with full knowledge thereof applied for reinstatement as aforesaid, and was re-instated as a member of defendant company.

T. R. PALMER.

Subscribed and sworn to before me this 15th day of February, 1902.

J. W. DOOLITTLE, [SEAL.]
Notary Public, Ramsey County, Minn.

(Endorsed:) Affidavit of Timothy R. Palmer, *re* E. B. Trubey. Filed. February 17th, 1902 Henry D. Lang clerk.

648 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Plaintiffs,
against
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, and Others, Defendants. } (In Equity.)

STATE OF MINNESOTA, *County of Ramsey,* } *ss:*

Elmer H. Dearth being first duly sworn, deposes and says, that he now is and for more than one year last past has been the insurance commissioner of the State of Minnesota, the officer who under the statutory law of said State is authorized and required to value the assets and compute the reserve liability and ascertain the other liabilities, and determine the solvency of each and every life insurance company organized and doing business under the laws of the State of Minnesota, or organized of any other State or of a foreign country, and licensed to transact business within the State of Minnesota; that at the close of the year 1901 this deponent did carefully examine into the affairs of the above named defendant, The Minnesota Mutual Life Insurance Company, and did value all of its assets, and did ascertain all of its liabilities, and did compute its reserve
649 liability strictly in accordance with the requirements of the laws of Minnesota in such case made and provided; that at the close of business on the 31st day of December 1901, the value of the assets of said The Minnesota Mutual Life Insurance Company was $1,805,325.59; that the entire liabilities, including reserve, of said The Minnesota Mutual Life Insurance Company at the close of business on the 31st day of December, 1901 amounted to

$1,192,632.38, consisting of $14,000 for death losses in process of adjustment; $8,000 death losses reported but for which no proofs of death had been received, and $6,000 contingent liability on account of disputed death claims, $1,842.38 salaries, rents, commissions, taxes, current bills etc., due or accrued, and $15,223 of the guaranty trust fund so-called, which by the terms of certain of the early certificates issued by the company is to be returned to the families of members upon decease of the respective members holding such contracts; that said reserve liability includes the reserve which is charged against said company as required by law, as security for the payment of all outstanding so-called mortuary assessment certificates and all other outstanding policies. That the gross divisable surplus of said company at the close of business on the 31st day of December 1901, amounted to $612,693.21.

Deponent further says, that said reserve liability is in fact an accumulation of assets to insure and secure the payment of
650 all outstanding policies as they shall from time to time mature in the future.

Deponent further says, that prior to the 5th day of August, 1901, the date when said The Minneso*at* Mutual Life Insurance Company was re-organized as a legal reserve company, it, said company, was not required by the statutes or any other laws of the State of Minnesota, to maintain any reserve, nor was it chargeable with any reserve liability as security for any of its policy holders, although by express terms of some of its contracts to-wit: the so-called guaranteed option policies, it agreed to maintain a certain reserve thereon and therefor; that by the provisions of chapter 175 of the General Laws of the State of Minnesota for the Year 1895, entitled "An act to revise and codify the insurance laws of the State," as amended by chapter 143 of the General Laws of said State for the Year 1901, under which said The Minnesota Mutual Life Insurance Company was reorganized as a legal reserve company, it is expressly provided that the insurance commissioner of said State of Minnesota shall each year compute the reserve liability on the 31st day of December of the preceding year, on all life insurance policies issued by any legal reserve life insurance company licensed to transact business in the State of Minnesota, and that a reserve on the basis provided by said sta-ute shall be charged against such company for each out-
651 standing policy including so-called mortuary assessment certificates; that by the express terms of said act, as amended, it is provided that he shall allow as an asset and credit against the reserve liability the amount of any lawful interest-bearing lien against or loan upon any policy, to the extent of, but not exceeding the net value of premium reserve of such policy, computed as by said act provided. And this deponent further says, that in valuing the assets of said company, and in computing its reserve liability and in ascertaining its financial condition, he did allow as an asset and as a credit against said reserve liability the amount of certain lawful liens carried by certain of the policies of said company under

express written contract with the insured in each case; but that in no instance did the amount of any lien so allowed and credited exceed the reserve liability on such policy, but on the contrary the amount of such lien so allowed and credited was in each case very much less than the amount of such reserve liability.

This deponent further says, that in order to compute and charge the reserve liability upon said policies as provided by statute, it is by said statute made his imperative duty at the same time to credit and allow against said liability the amount of said liens, as aforesaid.

This deponent further says, that, in any event, and even if the statute did not so require the allowance and credit of such
652 lien, then under well recognized rules of actuarial science adopted and applied by the actuaries and insurance departments throughout the United States, there could be no reserve liability charged against any of said so-called lien policies, except from the actual date of issuance thereof, if the amount of such liens, not exceeding said reserve liability, were not allowed as an asset and credited against such reserve liability; and that the only effect of disallowing said liens as an asset and credit against said reserve liability, would be to diminish the assets to the amount thereof, to diminish the reserve liability to the amount thereof, and to diminish the insurance in force to the amount thereof.

Deponent further says, that as fact, as said policies mature, by death or otherwise, the amount of the lien on each policy so matured is converted into cash and becomes a cash asset of the company, just the same as an ordinary loan on a policy becomes a cash asset on maturity of the policy.

Deponent further says, that eliminating the so-called guaranty trust fund from the assets of the company and wholly disregarding the same in computing its reserve liability, and in ascertaining its financial condition, the said Minnesota Mutual Life Insurance Company had at the close of business on the 31st day of December, 1901, a surplus amounting to many thousands of dollars. In
653 other words, that at the close of business on the 31st day of December, 1901, the said The Minnesota Mutual Life Insurance Company had assets, exclusive of said so-called guaranty trust fund largely in excess of its entire liabilities, including said reserve liability, and to the amount of many thousands of dollars.

Deponent further says, that said The Minnesota Mutual Life Insurance Company is in no sense of the word insolvent; that in ratio of assets to liabilities it is among the strongest financially of the large number of life insurance companies transacting business in the United States.

ELMER H. DEARTH.

Subscribed and sworn to before me this 7th day of March, A. D. 1902

S. T. JOHNSON,

[SEAL.] *Notary Public, Hennepin County, Minnesota.*

45—178

(Endorsed:) Affidavit of insurance commissioner of State of Minnesota. Filed. March 10th 1902 Henry D. Lang clerk.

654 In the Circuit Court of the United States of America for the District of Minnesota.

ESDRAS B. TRUBEY and SAMUEL WRIGHT, Plaintiffs,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE CO. OF ST. PAUL, Minn., Formerly The Bankers Life Ass'n of Minn., and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minn. Mutual Life Ins. Co., Formerly the Bankers Life Ass'n of Minnesota, Defendants.

Know all men by these presents, that we, Esdras J. Truby and Samuel Wright as principals, and the Fidelity and Deposit Company of Maryland, a corporation, as surety, are held and firmly bound unto the defendants above named, in the sum of seven hundred and fifty dollars ($750.00) lawful money of the United States, for which payment we jointly and severally bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our se*l*as and dated this 21*th* day of March, A. D. 1902.

The condition of this obligation is such, that if the plaintiffs above named shall well and truly pay or cause to be paid, all costs adjudged against them in this action, then this obligation shall be
655 void; otherwise to remain in full force.

In testimony whereof, we have hereunto set our hands and seals this 21*th* day of March, A. D. 1902.

SAMUEL WRIGHT AND,
ESDRAS B. TRUBEY,
Complainants, [SEAL.]
By JOHN F. BYERS,
Their Counsel. [SEAL.]

Signed, sealed and delivered in the presence of
H. McALLISTER,
W. P. WARNER,
(As to surety.)

FIDELITY *NAD* DEPOSIT COMPANY
OF MARYLAND,
By O. M. METCALF,
A Member of the Local Board of Directors for Minnesota.

Attest: WM. M. CARSON, *Agent.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 20th day of March, 1902, before me, a notary public in and for said county, personally appeared John F. Byers, to me known to be the counsel for Esdras B. Trubey and Samuel Wright, the principals named in the foregoing bond, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his and their free act and deed.

H. McALLISTER,
Notary Public, Ramsey County, Minnesota. [SEAL.]

656 STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 20th day of March A. D. 1902, personally appeared before me O. M. Metcalf who being duly sworn deposes and says, that he is a member of the local board of directors for Minnesota of the Fidelity and Deposit Company of Maryland, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and the said O. M. Metcalf acknowledged said instrument to be the free act and deed of said corporation.

H. McALLISTER,
Notary Public, Ramsey County, Minn. [SEAL.]

(Endorsed:) Bond. Filed. March 20th 1902 Henrt D. Lang clerk.

657 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants, and ESDRAS B. Trubey, Intervening Plaintiff,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

This matter came on to be heard this 23rd day of June 1902, at ten o'clock in the forenoon, at the Federal court house in the city of St. Paul, Minnesota, before the Honorable Charles F. Amidon, judge

of the above named court, upon the motion of the defendants, for an order requiring the plaintiffs to furnish additional security for costs, and upon the order to show cause thereon; and it appearing that due notice of this motion and of the order to show cause has been given to plaintiffs, John F. Byers Esq., appearing for the plaintiffs, and William D. Mitchell Esq., appearing for the defendants;
658 and it appearing to the court that neither of the plaintiffs above named are residents of the State of Minnesota, and that the amount of costs and disbursements which the defendants will be entitled to tax against complainants, in case the defendants are successful in this cause, may exceed the sum of $1586.00, and that the amount of security for costs heretofore given by the complainants amounts to only the sum of $750.00, and that in order to adequately secure the defendants for the amount of such costs and disbursements it is necessary that the plaintiffs should be required to give additional security in the sum of one thousand dollars ($1,000.00).

Now upon motion of Messrs. How, Taylor & Mitchell, solicitors for defendants, and upon all the file-, records and proceedings in this cause,

It is ordered that the plaintiffs Samuel Wright and Esdras B. Trubey file with the clerk of this court a bond in the penal sum of $1,000.00 conditioned to pay the costs and disbursements which may be awarded to the defendants or either of them in the above entitled cause; said bond shall have two or more sureties, to be approved by this court, who shall be residents and freeholders of the State of Minnesota, and each worth at least the amount of said bond over and above his just debts and liabilities and property exempt from execution; the defendants shall have six days after written notice of the filing of sa*di* bond in which to file exceptions to the
659 sufficiency of the sureties thereon, and in case such exceptions are filed such sureties shall be required to appear in person and justify before the court. In case a surety company in good standing and authorized to do business in the State of Minnesota becomes a surety on said bond, then no other sureties shall be required. The bond provided for in this notice shall be in addition to and not as a substitute for the bond heretofore given by the plaintiffs. If the said bond shall be executed in behalf of the said plaintiffs or either of them by an attorney at law or in fact, written authority to the said attorney to execute said bond on behalf of the plaintiffs, duly executed and acknowledged before a notary public, shall be filed with said bond. If the said plaintiffs shall fail to file such bond in the manner herein provided within ten (10) days from the date hereof, or if said sureties shall fail to appear and justify before the court when required so to do, then the bill of complaint in the above cause will be dismissed upon application of defendants.

This order is made without prejudice to the right of the defend-

ants to move for further security when that herein provided shall be exhausted.

Dated June 24th, 1902.

CHARLES F. AMIDON, *Judge.*

(Endorsed:) Order for additional security. Filed June 24th, 1902. Henry D. Lang, clerk. By Louise Trott, deputy.

660 STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 17 day of July A. D. 1902, personally appeared before me E. Howard Morphy who being duly sworn deposes and says, that he is a member of the local board of directors for Minnesota of the Fidelity and Deposit Company of Maryland, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was corrected by inserting the word "against" in the condition of said bond on behalf of said corporation by authority of its board of directors and the said E. Howard Morphy, acknowledged said correction to be the free act and deed of said corporation.

[SEAL.]

JOHN W. BRADFORD,
Notary Public, Ramsey County, Minn.

661 In the Circuit Court of the United States of America, District of Minnesota, Third Division.

ESDRAS B. TRUBEY and SAMUEL WRIGHT, Complainants,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minn., Formerly The Bankers Life Ass'n of Minn., and C. H. Bigelow, John B. Sanborn, Maurice Aurebach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minn. Mutual Life Ass'n of Minnesota, Defendants.

Know all men by these presents, that we, Esdras B. Trubey and Samuel Wright, as principals, and the Fidelity and Deposit Company of Maryland, a corporation, as surety are held and firmly bound unto the defendants above named, in the sum of one thousand dollars ($1,000.00) lawful money of the United States, for which payment we jointly *nad* severally bind ourselves our and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals and dated this 30 day of June A. D. 1902.

The condition of this obligation is such, that if the complainants above named shall well and truly pay or cause to be paid, all costs

adjudged against them in this action, then this obligation shall be void; otherwise to remain in full force.

662 In testimony whereof, we have hereunto set our hands and seals this 30 day of June A. D. 1902.

SAMUEL WRIGHT AND [SEAL.]
ESDRAS B. TRUBEY, [SEAL.]
By JOHN F. BYERS, [SEAL.]
Their Attorney.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By E. HOWARD MORPHY,
A Member of the Local Board of Directors for Minnesota.
Attest: WM. M. CARSON, *Agent.* [SEAL.]

Signed, sealed and delivered in presence of—

E. ANDERSON,
C. G. LAWRENCE,
S. I. LOUGHRAN,
E. ANDERSON,
(As to surety.)

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 30 day of June A. D. 1902, before me, a notary public in and for said county, personally appeared John F. Byers, to me known to be the counsel for Esdras B. Trubey and Samuel Wright, the principals named in the foregoing bond, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his and their free act and deed.

CHARLES G. LAWRENCE,
Notary Public, Ramsey County, Minnesota. [SEAL.]

663 STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 1 day of July A. D. 1902, personally appeared before me E. H. Morphy who being duly sworn deposes and says, that he is a member of the local board of directors for Minnesota of the Fidelity and Deposit Company of Maryland, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and the said E. Howard Morphy, acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.]

S. I. LOUGHRAN,
Notary Public, Ramsey County, Minn.

(Endorsed:) Bond. Filed July 3rd, 1902, Henry D. Lang, clerk.

The within bond and the surety thereon are hereby approved as being in accordance with the order of the court made on the 24th day of June 1902.

CHARLES F. AMIDON, *Judge.*

664 Pursuant to adjournment the parties met on the 24th day of May, 1902, by their respective solicitors, at the office of Messrs. How, Taylor and Mitchell, the attorneys for the defendants, and in the presence of the special examiner, H. Harcourt Horn, Esq., the further taking of testimony is proceeded with as follows:

DOUGLAS PUTMAN, recalled, testifies as follows on behalf of the defendants:

Examined by Mr. MITCHELL:

Q. You are the secretary of the defendant company?

A. Yes, sir.

Q. You testified on behalf of the plaintiff heretofore in this action?

A. I did.

Q. Have you the book of minutes or records of the proceedings of the board of trustees and members of the defendant company?

A. I have.

Q. I will ask you to turn to the records of the meeting held on August 9th, 1884, a meeting of the trustees.

A. August 9, 1884, yes.

Q. Was there a meeting of the trustees held on that date?

A. There was.

Q. There is a reference in the pleadings in this case, in the complaint and answer, to an amendment to article 12 of the articles of association which was made on that date; I will ask you to state if any resolution of the board of trustees was passed at that time with reference to article 12.

A. There was.

665 Q. Is it contained in the records of that meeting?

A. It is.

Q. On what pages of your book of minutes?

A. It is found on pages 56 and 57.

Mr. MITCHELL: I will offer in evidence pages 56 and 57 from the book of minutes as referred to and identified by the witness.

Said pages 56 and 57 are as follows:

"The following resolution was unanimously adopted:

Resolved That article XII of the articles of incorporation of this association be and the same is hereby amended as follows:

After the word "therefrom" in the first clause of said article omit

the words "First, the whole amount pledged thereto by the deceased. Second" so as to make said article read as follows:

"Upon the death of each member of this company its family shall receive therefrom a sum equal to two per cent. of the then subsisting guaranty trust fund, not exceeding, however, two thousand dollars" etc.

(The rest of said article to remain as before.)

Provided that this amendment shall go into effect upon the date that the guaranty trust fund aggregates one hundred thousand ($100,000) dollars and not prior to said date, and that it shall not apply to memberships issued by the association from the date of its organization to such date as said guaranty trust fund shall
666 aggregate said one hundred thousand ($100,000) dollars.

The following resolution was unanimously adopted:

Resolved That the 5th clause of the XIV article of the articles of incorporation be amended so as to read as follows:

"The other officers of this company shall be appointed by said board of trustees at the office of the company at said Saint Paul on the first Saturday *after the first Monday* of August A. D., 1880, and triennially thereafter."

The rest of said article to remain as before.

On motion Messrs. Auerbach, Bigelow & Merriam were appointed a committee to verify the books and accounts of the secretary and treasurer at the close of the current fiscal year.

Adjourned.

(Signed) R. R. DORR, *Sec'ty.*

667 Q. Will you turn to your records on November 24, 1890, was any resolution passed at that meeting of the board of trustees with regard to the articles of incorporation of the defendant company?

A. There was.

Mr. BYERS: I think it will be admitted that Exhibit B was adopted as alleged in the answer of the defendant.

Mr. MITCHELL: That is all right.

Mr. BYERS: I will admit that.

Mr. MITCHELL: Will you further admit that the statutes of the State of Minnesota with regard to recording, filing, publishing, etc. of this Exhibit B were complied with, and that the same were duly approved by the officers of the State of Minnesota as required by law?

Mr. BYERS: Yes, I will admit that the statutes of the State of Minnesota with regard to the recording, filing and publishing of said articles were complied with, and also that the same were approved by the officers of the State of Minnesota as required by law.

Q. Now will you turn to the record of the meeting of the board of trustees on the date of November 21, 1892?

A. Yes.

Q. Was there a meeting of the board of trustees of the Banker's Life Association on that date?

A. There was.

Q. Was any resolution passed at that meeting by the board of trustees with regard to an amendment of the articles of incorporation?

A. There was.

Mr. MITCHELL: Is it admitted that Exhibit C of the defend-
668 ant's answer was adopted, as alleged in the answer of the defendants, and that the statutes of the State of Minnesota with regard to filing, recording and publishing these articles were complied with, and that the same were approved by the officers of the State of Minnesota as required by law.

Mr. BYERS: Yes. It was also required that they should be approved by the insurance commissioner and the attorney general, and I will admit that the statutes were complied with with regard to filing, recording and publishing the articles, and that they were approved by the officers of the State of Minnesota as required by law.

Q. Mr. Putnam, will you turn to the meeting of the board of trustees of the Banker's Life Association of December 24, 1898?

A. Yes.

Q. Was there a meeting of the board of trustees held on that date?

A. There was.

Q. Was there any action taken at that meeting by the board of trustees with regard to the amendment of the articles of incorporation of the Bankers Life Association of Minnesota?

A. There was.

Mr. MITCHELL: Is it admitted that Exhibit D attached to the answer of defendants was adopted as alleged in the answer, and that the statutes of the State of Minnesota with regard to filing, recording and publishing of these articles, and with regard to their approval by the proper officers of the State were complied with.

669 Mr. BYERS: I am willing to admit that the articles of incorporation and the by-laws were formally adopted, and that the requirements of the statute were formally complied with, subject to the objection that they are immaterial, incompetent and irrelevant, and constitute an attempted violation of the rights of the complainants in this case.

Q. Mr. Putnam, turn to the record of the annual meeting of the members of the Bankers Life Association of Minnesota held on August 5, 1901.

A. Yes.

Q. Does the book before you contain a complete record of the proceedings of that meeting?

A. It does.

Q. On what pages of this book does that record appear?
A. It begins on page 253 and continues and terminates on page 262.

Mr. MITCHELL: I will offer in evidence the record of the meeting of August 5, 1901, as contained on pages 253 to 262 inclusive.
Mr. BYERS: Complainants object to the introduction of this record as immaterial, incompetent, and irrelevant.
Mr. MITCHELL: You make no objection on the ground that there is no proper foundation laid?
Mr. BYERS: No.
Mr. MITCHELL: Is it admitted that the articles of incorporation referred to as having been adopted at this meeting of August 5, 1901, are correctly set forth in Exhibit E of the answer?
Mr. BYERS: Yes.
670 Said pages of the record last referred to, to-wit pages 253 to 262 inclusive are as follows:—

ST. PAUL, MINN, *August 5th*, 1901.

The regular annual meeting of the Bankers Life Association was held on the 5th day of August 1901, at ten o'clock in the forenoon at the home office of the association in the St. Paul Fire and Marine building, in the city of St. Paul, State of Minnesota, pursuant to its articles of incorporation and by-laws, and to the laws of the State of Minnesota, and pursuant to due notice to all members, in accordance with its by-laws and the laws of the State in such case made and provided.

The meeting was called to order by President Timothy R. Palmer. Secretary Douglas Putnam performed the duties of secretary at the meeting.

In view of the large attendance, upon the motion of J. H. Beek, duly seconded, it was unanimously resolved that the meeting adjourn to room 35 Fire and Marine building.

The following, and only the following named members were present in person:

M. Auerbach	St. Paul	$6000
J. H. Beek	"	2000
A. L. Belknap	Minneapolis	2000
C. H. Bigelow	St. Paul	6000
D. P. Brady	Washington, D. C.	6000
671 J. O. Breding	Minneapolis	2000
J. N. Castle	Stillwater	6000
R. M. Coles	"	2000
John Caulfield	St. Paul	6000
A. M. Carlson	"	4000
E. W. Durant	Stillwater	6000
C. H. Dearborn	Blue Earth City	2000
F. B. Dodge	Minneapolis	4000
P. A. Egan	St. Paul	2000

M. R. Everett	Waterville, Minn	2000
S. B. French	Menomonie Wis	2000
M. C. Egan	St. Paul	2000
A. F. Foster	Litchfield Minn	4000
J. F. R. Foss	Minneapolis	6000
N. P. Fisk	St. Paul	2000
J. Friedlander	"	2000
F. D. Garretty	"	2000
S. B. Gault	"	2000
G. S. Haskell	Chicago, Ill	4000
E. Hammer	St. Paul	2000
N. B. Hinckley	"	4000
D. W. Jones	Minneapolis	6000
N. S. Kepper	St. Paul	2000
J. H. Long	Mankato	6000
Jas. McCabe	Northfield	2000
Andrew McGrath	Stillwater	2000
J. M. McDonough	Rosemount	2000
672 John McCarthy	Stillwater	4000
C. McCarthy	Rosemount	2000
J. M. Martin	Minneapolis	4000
A. Murphy	"	6000
D. Putnam	St. Paul	6000
Albert Schaller	Hastings	6000
J. W. Shannon	St. Paul	2000
Jacob Stone	Minneapolis	4000
W. J. Sheehan	"	4000
E. B. Truby	"	6000
G. F. Umland	St. Paul	2000
Representing in person		$156,000

The board of trustees of said Bankers Life Association, through Messrs. C. H. Bigelow, Maurice Auerbach, Crawford Livingston and J. F. R. Foss, was present as proxy for all the members of this association whose appointments of said board of trustees as proxy for them respectively appear by the proxy register to have been registered therein on or prior to the 31st day of July 1901, and the insurance now carried by the members so represented by said proxy or proxies, (2917 in number,) amounts in the aggregate to $8,910,000 of insurance, and was entitled to 8910 votes at said meeting.

Mr. Douglas Putnam was present in his own behalf and as proxy for all members whose appointments of said Douglas Putnam
673 for them respectively appear by the proxy register to have been registered therein on or prior to the 31st day of July 1901. Insurance now carried by the members represented by said proxies, (45 in number,) amounts in the aggregate to $147,000, and was entitled to 147 votes at said meeting.

Mr. A. L. Belknap was present in his own behalf and as proxy for

all members whose appointments of said A. L. Belknap for them respectively appear by the proxy register to have been registered therein on or prior to the 31st day of July 1901. Insurance now carried by the members represented by said proxies, (10 in number,) amounts in the aggregate to $38,000 and was entitled to 38 votes at said meeting.

Mr. Charles H. Bigelow was present in his own behalf and as proxy for John B. Sanborn, whose appointment of said Charles H. Bigelow for him appears by the proxy register to have been registered therein on or prior to the 31st day of July 1901. Insurance now carried by the member represented by said proxy amounts in the aggregate to $6,000, and was entitled to 6 votes at said meeting.

Mr. P. A. Egan was present in his own behalf and as proxy for R. R. Wise, whose appointment of said P. A. Egan for him appears by the proxy register to have been registered therein on or prior to the 31st day of July 1901. Insurance now carried by the member represented by said proxy amounts in the aggregate to $6,000, and was entitled to 6 votes at said meeting.

674 Mr. F. B. Dodge was present in his own behalf and as proxy for H. A. Spooner whose appointment of said F. B. Dodge appears by the proxy register to have been registered on or prior to the 31st day of July 1901. The insurance now carried by the member represented by said proxy amounts to $2,000 and was entitled to 2 votes at said meeting.

Recapitulation.

Represented in person	$156000
" by the board of trustees	8910000
" " Douglas Putnam	147000
" " A. L. Belknap	38000
" " Charles H. Bigelow	6000
" " P. A. Egan	6000
" " F. B. Dodge	2000
Total represented in person and by proxies	$9,265,000

President Palmer announced that the secretary would now present his report. Thereupon Secretary Putnam presented financial statement of the company for the year ending July 31st 1901, showing a full and specific report of all receipts and expenditures, the securities in which the assets are invested, the total amount thereof, and the funds to which these assets belong.

Jacob Stone of Minneapolis, seconded by E. W. Durant of Stillwater, moved that the secretary's report be referred to a com-
675 mittee of three, to be appointed by the chair, to render a report thereon at an adjourned meeting.

After discussion, President Palmer appointed J. H. Beek and P.

A. Egan as tellers. The ballots were then collected and the result of the vote was announced as follows:

Votes cast in favor of the motion	94
" " against " "	9149

The chairman thereupon announced the motion lost.

Mr. Geo. F. Umland of St. Paul moved, seconded by P. A. Egan "That the secretary's report be accepted and adopted." Thereupon J. N. Castle of Stillwater, moved as a substitute "That the secretary's report be received and placed on file."

This motion being duly seconded, vote was taken and resulted in 78 votes being cast in favor of the motion, and 9139 cast against it. The chairman declared the motion lost.

Thereupon the original motion of Geo. F. Umland, "That the secretary's report be accepted and adopted," was put to vote. 9219 votes were ca-t in favor of the motion and 18 votes were cast against it. The chairman thereupon declared Mr. Umland's motion carried.

Mr. F. B. Dodge of Minneapolis thereupon presented the following resolution, and moved its adoption, motion to adopt being seconded by J. H. Beek:

"Resolved, That the Bankers Life Association of Minnesota,
676 hereby authorizes and declares its re-incorporation, and does hereby re-incorporate under and by virtue of chapter one hundred and seventy-five (175) as amended, of the General Laws of the State of Minnesota for the Year Eighteen hundred and ninety-five entitled "An act to revise and codify the insurance laws of the State;" and to that end does hereby adopt the following articles of incorporation, in lieu of, and as a substitute for, any and all articles of incorporation, heretofore existing, viz:

(Here follow articles of incorporation which are omitted by stipulation of the parties.)

After some discussion as to the merits of the foregoing resolution, motion was made by A. F. Foster, seconded by E. W. Durant of Stillwater, "That the meeting adjourn to 1.30 p. m.," a *viva voce* vote being taken, by unanimous consent the motion was declared carried.

ONE THIRTY P. M.

Pursuant to adjournment, the meeting was duly called to order by President Palmer. The consideration of Mr. Dodge's resolution as to the adoption of articles of re-incorporation was continued, and all members were given full opportunity to express their views and to make any inquiries regarding it. The question having been discussed in all its bearings, ballot was taken, and it was thereupon found that the total number of votes cast in person and by proxy were 9213 in favor of the adoption of the resolution, and 4
677 votes (one ballot) against it. Thereupon the chairman announced the resolution duly adopted.

E. W. Durant of Stillwater in strong, eulogistic terms stated that the trustees and officers of the association were entitled to the thanks of every member present. Thereupon Jacob Stone moved that "It is the sense of this meeting that the officers and trustees are entitled to the thanks of every member of the Bankers Life Association for their able, conscientious and faithful administration of all the affairs relating to the management of the company." The motion was seconded by A. F. Foster, and thereupon being put to vote was carried unanimously.

There being no further business before the meeting, Mr. Maurice Auerbach moved that the meeting adjourn, and being duly seconded, the motion was out to vote and carried unanimously.

Thereupon the meeting adjourned *sine die*.

(Signed) DOUGLAS PUTNAM, *Secretary.*

Attest: T. R. PALMER, *President.*

678 It is stipulated and agreed between counsel that a copy of the articles of incorporation contained in the proceedings of said meeting of August 5, 1901, being contained in Exhibit E of answer may be omitted from the record at this time.

Mr. BYERS: It is further admitted that the articles referred to as contained in exhibit of the answer were filed in the office of the insurance commissioner of the State of Minnesota on August 5, 1901, and were on that date approved by the insurance commissioner; and also that the statutes of the State of Minnesota with regard to the filing, recording and publishing of these articles as contained in Exhibit E, and with regard to their approval by the State officers were formally complied with.

Q. Mr. Putnam, will you turn to the records in your books under date of August 9, 1901?

A. Yes.

Q. Was there a meeting of the board of trustees of the Bankers Life Association held on that date?

A. There was.

Q. Was there any action with regard to the adoption of by-laws under these amended articles of incorporation above referred to as contained in Exhibit E?

Mr. BYERS: I object to this as immaterial, incompetent and irrelevant.

A. There was.

Q. Was there any meeting of the board of trustees of the Bankers Life Association held on August 9, 1901?

A. There was.

Q. Were you the secretary of the defendant company on that date?

679 A. I was.

Q. As such secretary did you keep a record of that meeting?

A. I did.

Q. I will ask you to produce the record of the meeting of the board of trustees of the Bankers Life Association on August 9, 1901.

A. I have it.

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.

Q. This record is contained in what book?

A. It is known as the records of the board of trustees and the members of the company.

Q. On what pages in this book does the record of this meeting of August 9, 1901, appear.

A. On pages 264 to 270, both inclusive.

Q. Do these pages referred to contain a correct record of the proceedings of that meeting of the board of trustees of the Bankers Life Association?

A. They do.

Mr. MITCHELL: I will offer in evidence pages 264, 270 of the record referred to.

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant; but it will be admitted that Exhibit F of defendant's answer is a correct copy of what appears on those pages in the book of records referred to.

Mr. MITCHELL: In order to shorten the record, that portion of the record of the meeting of August 9, 1901, which contains a copy of the by-laws may be omitted.

680 Mr. BYERS: That is right.

Page 264 last referred to is as follows:

ST. PAUL, MINN., *Aug. 9th*, 1901.

Pursuant to adjournment, meeting of the board of trustees was duly called and held at the office of the company this Friday morning at eleven o'clock.

Present: Trustees Bigelow, Auerbach, Livingston and Foss.

President Palmer presented the following by-laws.

(Then follow articles of the by-laws as contained in Exhibit F of defendants' answer therein.)

After said by-laws which are contained on pages 264–5–6–7–8–9, the following appears on pages 269 and 270:

These bylaws having been duly considered, upon motion of Mr. Livingston, seconded by Mr. Foss:

"Resolved, That these by-laws be and they are hereby adopted."

The motion is unanimously carried.

Upon motion of Mr. Livingston, seconded by Mr. Foss, the following resolution was unanimously adopted:

Resolved, That the present trustees and the present officers of the company, with the exception of treasurer, be and they are hereby continued, with salaries, powers and duties, and subject to liabilities and restrictions as heretofore until such time as this board may otherwise determine; provided that except as otherwise expressly determined, but subject to the supervision of the board of
681 trustees, the president shall have the general management of the compan-'s affairs.'

(In the margin on the left hand side of the foregoing resolution, appears "Present trustees and officers continue.")

As the by-laws provide that the number of trustees shall be seven instead of five as heretofore, upon motion of Mr. Livingston, seconded by Mr. Auerbach, Mr. Kenneth Clark and Mr. Albert H. Lindeke were unanimously elected as trustees until the next annual meeting to be held in March, 1902.

(In the margin on the left hand side of the foregoing resolution, appears "Clark, Lindeke.")

There being no further business, the meeting adjourned.

(Signed) DOUGLAS PUTNAM, *Sec'y.*

Q. Was any meeting of the board of trustees of the Bankers Life Association of Minnesota held on November 6, 1899?

A. There was.

Q. Were you secretary of the company at that time?

A. I was.

Q. Did you keep the records of that meeting?

A. I did.

Q. In what book is that record contained?

A. The record of the board of trustees and members.

Q. Does the book of minutes as kept by you as secretary to the association show that meeting and the proceedings of the board of trustees at such meeting?

A. It does.

682 Q. On what pages?

A. On pages 179 to 182, both inclusive.

Mr. MITCHELL: I will offer in evidence page 179 of the book of minutes referred to, and the first paragraph on page 180, said pages containing proceedings of the board of trustees at their monthly meeting held on November 6th, 1899, referred to by the witness.

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.

Pages 179 and 180 as introduced by counsel for defendants are as follows:

ST. PAUL, MINN., *Nov. 6th*, 1899.

The regular monthly meeting of the board of trustees was duly held at the office of the association this Monday afternoon at three o'clock.

Present: Trustees Bigelow, Auerbach, Sanborn and Livingston.

Secretary read minutes of meetings held October 2nd and October 28th, and submitted his report for the month of October, and all were duly approved.

Elmer.—Secretary called attention to the fact that the association had loaned Howard H. Elmer $5000 at 5%, secured by real estate mortgage upon lot 1 of James W. Heather's subdivision of block 7, Terrace Park addition, this loan having been authorized by the board at meeting held October 2nd, provided the title was found to be satisfactory. See page 185.

683 Investments.—Secretary asked that at least $50,000 of the present funds on hand be invested. Thereupon Chairman Bigelow was requested to ascertain a desirable investment and report at the next meeting.

U. S. bonds.—On motion of John B. Sanborn, seconded by Maurice Auerbach, it was resolved that all the United States registered bonds, in excess of $100,000, now with the State treasurer of Minnesota, be withdrawn from said treasurer and be deposited in the association's safe in the safety vault in the National German American Bank building. After the bonds have been so deposited, the custodian of the safety vault shall be instructed not to open the safe except in the presence of both an officer and a trustee of the association, the officer to hold the key.

Safety vault. See page 185.

Upon motion of Maurice Auerbach, seconded by John B. Sanborn, the following resolution was unanimously adopted:

"Whereas, among death claims which have been duly established and approved are the following:

684

Name of deceased member.	Residence of deceased member.	Date of death of deceased member.	No. of memberships held by deceased at his death, and am't specified in each.
Ernest G. Reinhardt.....	Roberts, Ill.....	May 8, 1899	One certificate For $2000
Charles Kruger.....	Duluth, Minn.....	May 22, 1899	" $2000
George F. Putnam.....	Kansas City, Mo...	May 30, 1899	" $2000
Abraham A. Devore.....	Chicago, Ill.....	June 6, 1899	" $2000
Justin B. Hicks.....	New Richmond Wis.	June 12, 1899	" $2000
Oscar B. Hillis.....	Omaha, Neb.....	June 23, 1899	" $2000
John Dowlan	St. Paul, Minn.....	July 6, 1899	" $2000
Frank Schmidt.....	Marysville, Kans...	July 20, 1899	" $2000
Edward R. Dale.....	Marietta, Ohio.....	Aug. 12, 1899	" $2000
Andrew T. Sundal.....	Belle Rapids, S. D..	Aug. 17, 1899	" $2000

"Therefore be it resolved that on the fourth day of December 1899, the members of the Bankers Life Association of Minnesota be and they are hereby severally and respectively assessed two per cent. of their respective guaranty deposits on account of each of said claims, to be collected and applied according to the articles of association."

685 Mr. MITCHELL: Mr. Byers, I will ask you to produce, in answer to a notice to produce served upon you, the notice of mortuary assessment for December 1899 sent to the plaintiff Samuel Wright, on or about December the first 1899.

Mr. BYERS: I have no such notice.

Mr. MITCHELL: You make no point that the notice to produce was not served upon you within a reasonable length of time before this hearing, do you?

Mr. BYERS: No.

Q. What was the custom and practice in your office, Mr. Putnam, during the year 1899 with regard to the mailing of notices of mortuary assessments to the members?

Mr. BYERS: We object to the question as to custom and practice as immaterial, incompetent and irrelevant.

A. After the trustees had ordered a mortuary assessment to be levied upon the members, the practice was to have the proper notice printed, and thereupon the blanks contained in that notice would be filled up by a number of clerks. The number of blanks to be filled up was so large that one clerk could not do it, and accordingly a number of clerks were employed to fill out these notices and to address the envelopes to the members. After the notices had been thus written and the envelopes addressed, they were carefully checked with the printed book of the company, to see that the names and amounts and addressed and so forth were all correct.

686 Thereupon, the notice was placed in the envelope and the envelopes addressed to the respective members. These envelopes were sealed and the postage on them affixed. Then these notices thus contained in the envelopes were carefully checked with what is termed, the office tickler which contains a list of the members assessed, giving their names and the amounts called for from each. These notices after having been thus checked, were placed in the mail bag by a clerk, and this mail bag was thereupon conveyed by the clerk to the postoffice and deposited with the postoffice authorities.

Q. Was that the practice followed by your office force in the case of the mortuary assessment referred to in the record of the meeting of the board of trustees held on November 6, 1899, which has just been introduced in evidence.

Mr. BYERS: I object to this question as immaterial, incompetent and irrelevant.

A. It was. At the same time that these notices were being written the receipt covering the assessment to be paid by the member was also written, and these receipts after being carefully compared by a clerk with the records, were entered in the tickler.

Mr. BYERS: I move to strike out all of the answer of the witness after the words "it was" as being not responsive to any question, but being a volunteered statement on the part of the witness.

Q. I will ask you to state what other acts were done by the company in its practice in this matter, though I think you have stated that.

687 Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

A. At the time of making out this assessment notice a receipt was written for the amount that the member was to pay as an assessment, and this receipt, or these receipts were then carefully entered in the assessment tickler. After so doing they were checked up by a clerk, and these receipts were then sent to the respective repositories for collection. They were taken to the postoffice at the same time that these notices were mailed to the members.

JOSEPH W. SHANNON, a witness produced and sworn on the part of the defendant, testifies as follows:

Examination in chief by Mr. MITCHELL:

Q. What is your name?
A. Joseph William Shannon.
Q. What is your occupation?
A. Cashier of the Minnesota Mutual Life Insurance Company.
Q. Were you in the employ of that company or the Bankers Life Association of Minnesota as it was then called, during the month of December 1899?
A. I was.
Q. And for how long a time prior to that date?
A. Since January, 1892.
Q. Did you take any part in the mailing of notices of the mortuary assessments in December 1899?
A. I did.
Q. State what part you took (counsel hands a book to witness).

688 A. I placed in the mail bag, I have three mail bags, the notices of the December 1899 assessment, addressed to every member, whose name I check in red ink in the tickler as it is called, and also in one set of bags letters containing receipts for collections addressed to every bank, checked in black ink in the tickler. These three bags were taken by me to the postoffice in St.

Paul, there having been delivered by me to a postoffice employe named Millette at 4.30 p. m. on Saturday December 4th, 1899.

Q. Are you refreshing your recollection from any memorandum made at that time?

A. Yes, sir.

Q. What is the nature of that memorandum, was it made by you at the time of this transaction?

A. Yes, sir.

Q. This memorandum from which you have refreshed your recollection, does it contain a correct statement of what took place at that time?

A. Yes, sir.

Q. State the nature of that memorandum: I want to show what kind of a memorandum it is.

Mr. BYERS: I object to this as incompetent, and immaterial.

A. It is a memorandum in my hand writing in ink to indicate when I went, and when I arrived back at the office. No, I will correct that statement; it is a memorandum which I make on December 6th.

Q. Did you state what was the date of mailing these notices?

A. Yes, I said it was December 4th. I made the affidavit on December 6th.

689 Mr. BYERS: I move to strike out the answer of the witness, on the ground that his testimony was given from a memorandum which according to his own evidence was not made at the time of the transaction.

Q. At the time you made this memorandum on December the 6th did you have a distinct recollection of what you had done on the 4th of December, with regard to this matter?

Mr. BYERS: I object to this as incompetent and irrelevant.

A. Yes, sir.

Q. Did you know then at the time you made this memorandum, and do you know now that at the time this memorandum was made it was a correct statement of what had taken place?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. This memorandum appears to be attached to some book, what is that book?

A. It is called in the office the tickler of the December assessment.

Q. Is that the book referred to by Mr. Putnam?

A. Yes, sir.

Q. I will ask you to state whether or not you addressed and deposited in the mail an envelope addressed to Samuel Wright of Mil-

waukee, Wisconsin, containing a notice of the December mortuary assessment for 1899, among the notices to which you have referred as having been mailed and deposited on that date.

690 Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and because no proper foundation has been laid for it.

A. Yes, sir.
Q. How do you know that.

Objected to by counsel for plaintiff as immaterial.

A. Because the name is checked off in the tickler.
Q. Have you before you the tickler?
A. Yes, sir.
Q. Is the name checked off?
A. Yes, sir, I see the name is checked off in red ink.
Q. Who made that red ink mark?
A. I did.
Q. When was that red ink mark made?
A. On December the 4th, the date on which I mailed the letters or notices.
Q. What was that red ink mark put there for by you at that time?
A. To indicate that I had dropped it in the bag.
Q. Dropped what in the bag?
A. The notice.
Q. What notice?
A. The notice to this man Wright, or a letter containing the notice, I should say.
Q. Do you know now whether or not at the time that red ink mark was made by you, you placed in the mails a letter addressed to Samuel Wright at Milwaukee containing the notice of the mortuary assessment referred to.

Objected to by counsel for plaintiff as immaterial.

A. Yes.

Mr. BYERS: I do not care to crossexamine the witness.

691 DOUGLAS PUTNAM.

Direct examination continued by Mr. MITCHELL:

A certain paper is marked Defendants' Exhibit 42.

Q. I show you a paper which has been marked Defendants' Exhibit 42 and ask you to state what that is.
A. That is a copy of the December notice, December 1899, the same notice that was mailed to Samuel Wright of Milwaukee, calling for——

Mr. BYERS: I object to the witness stating what the notice calls for, and I move to strike out that part of the answer to the last question, as far as it contains a statement of the contents of the document in question.

Q. Did your company print a form of notice for the December 1899 assessment?

A. It did.

Q. State whether or not this Exhibit 42 is one of those printed notices.

A. It is.

Q. Was that form of notice sent out at that time for that assessment?

A. It was.

Q. Mr. Putnam, has Mr. Samuel Wright paid anything to this company, either as mortuary assessments or as annual dues?

A. He has.

Q. I have not completed the question, since October first 1899?

Mr. BYERS: I object to this as immaterial and irrelevant.

A. No, we have not.

Q. I will ask you to state from the books of the company the amounts that Mr. Samuel Wright has paid in to the defend-
692 ant company, on account of his membership, from the date of his entry as a member up to the present time, giving an itemized statement of the respective payments, and the dates, and the purpose for which it was paid.

Mr. MITCHELL: Will you admit that this is the answer which the witness would make? (Showing a paper to counsel for plaintiff.)

Mr. BYERS: This is objected to as immaterial, incompetent and irrelevant. I suppose you produce this as his answer.

Mr. MITCHELL: Yes. Is there any objection made to this on the ground that the books are not offered in evidence?

Mr. BYERS: No.

Mr. MITCHELL: Or that no foundation is laid for it?

Mr. BYERS: No. I suppose that is what he would state. I object to it as immaterial, incompetent and irrelevant; but no objection is made on the ground that the books themselves are not introduced in evidence, or on the ground that no foundation is laid.

Counsel for defendants then introduces a sheet of paper containing the following letters and figures, as the answer of the witness to the last question:

Samuel Wright. No. 16068–9. Dec. 10, 1892. #66.

ge of entry 41.

nbership fees	41
l guaranty trust fund	82

	Dues.	Ass'm'ts.
2 Dec.	1230	
3 April	.....	492
July	.....	1640
Sept.	923	
Dec.	.....	1640
4 April	.....	1640
July	.....	1640
Sept.	1230	
Dec.	.....	1640
5 April	.....	1640
July	.....	1640
Sept.	1230	
Dec.	.....	1640
6 April	.....	1640
July	.....	1640
Sept.	1230	
Dec.	.....	1640
7 April	.....	1640
July	.....	1640
Sept.	1230	
Dec.	.....	1640
8 April	.....	1640
July	.....	1640
Sept.	1230	
Dec.	.....	1640
9 April	.....	1640
July	.....	1640
Sept.	1230	
nual dues	9533	31652
rt. ass'm'ts	31652	
nbership fees	41	
G. T. fund	82	
Total	53485	

Q. I forgot one thing. You have testified with regard to the proceedings at the meeting of August 5, 1901, and it ap-rs from that, from the record introduced in evidence, that there re four votes passed against the adoption of the articles of rein-poration. On what basis were the votes at that time passed? w many votes were permitted for each thousand dollars of in-ance?

A. Each one thousand dollars of insurance entitled a member to one vote.

Q. Now when the record indicates that four votes were cast against it, that means what?

A. It means that insurance to the amount of four thousand dollars was cast against the adoption of the motion.

Q. You were present at that meeting, were you not?

A. I was.

Q. Was that four thousand dollar vote cast against this adoption of the motion, held by one man, the insurance held by one man or by more than one?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

A. It was held by one man, one ballot was cast against the resolution only one.

Q. Who was it, if you know?

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.

A. Mr. A. F. Foster of Litchfield, Minnesota.

Q. Mr. Putnam, can you state from the books of the company the date on which Mr. Esdras B. Trubey, one of the plaintiffs in
695 this action paid his September 1901 annual dues.

Mr. BYERS: I object to this as immaterial, incompetent and irrelevant, and as not being one of the issues in the case.

A. On October 10, 1901.

Q. What was the amount of his annual dues under his three certificates at that time?

Mr. BYERS: I object to this as immaterial, incompetent and irrelevant, and because it is not within the issues of the case.

A. $18.

Q. I will ask you to state from the books of the company the amounts that Mr. Esdras B. Trubey, one of the plaintiffs in this case, has paid to the defendant company since he became a member, stating the dates that these amounts became payable, and giving an itemized statement of the amounts, and for what purpose they were paid in?

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.

Mr. MITCHELL: There is no objection made on the ground that the books are not in evidence, or that no foundation is laid.

Mr. BYERS: No.

Mr. MITCHELL: Then I will introduce this paper as the answer of the witness.

Mr. BYERS: Very well.

The paper introduced by counsel for defendants as the answer of the witness is as follows:

696 *Itemized Statement of E. B. Trubey's Payments.*

Age at entry, 40 years. No. 17376-7-8. Mar. 13, 1893.

Entrance premium 60
Paid to guaranty trust fund 120

		Ann. dues.	Mort. ass'm'ts.
1893	March	18	
1893	July	...	1680
	Sept	9	
	Dec	...	24
1894	April	...	24
	July	...	24
	Sept	18	
	Dec	...	24
1895	April	...	24
	July	...	24
	Sept	18	
	Dec	...	24
1896	April	...	24
	July	...	24
	Sept	18	
	Dec	...	24
1897	April	...	24
	July	...	24
	Sept	18	
	Dec	...	24
1898	April	...	24
	July	...	24
	Sept	18	
	Dec	...	24
1899	April	...	24
	July	...	24
	Sept. 18	18	
	Dec	...	24
1900	April	...	24
	July	...	24
	Sept	18	
	Dec	...	28.80
1901	April	...	33.60
	July	...	33.60
	Sept	18	
	Dec	...	33.60
1902	April	...	33.60
	Annual dues	171.00	684.00
	Mort. ass'mt's.	684	
	Membership fees	60	
	Paid guaranty trust fund	120	
	Total	1035.00	

697 Q. In your answer to the question in regard to the amount paid by Mr. Wright, were the dates you gave the dates that the amounts were paid in, or the dates that they became payable under the articles of incorporation and the by-laws?

A. The dates that they became payable.

A recess is here taken until two o'clock p. m. the same day at which time the further taking of testimony is proceeded with as follows:

DOUGLAS PUTNAM, recalled on the part of the defendant, testifies as follows.

Examined by Mr. MITCHELL:

Q. Mr. Putnam, what was Mr. Esdras B. Trubey's age at the time he became a member?

A. Mr. Trubey's age at the time he became a member was forty years.

Q. What was the age of Mr. Samuel Wright at the time he became a member?

A. His age was forty-one at the time he became a member.

698 TIMOTHY R. PALMER, recalled, testifies on the part of the defendants as follows.

Examination in chief by Mr. MITCHELL:

Q. What is your name?

A. T. R. Palmer.

Q. You are the president of the Minnesota Mutual Life Insurance Company?

A. I am.

Q. Did you have any conversation with Mr. Esdras B. Trubey, one of the plaintiffs in this cause, during the fall of 1901?

A. I did.

Q. When did that conversation take place?

A. October the 10th.

Q. And where did the conversation take place?

A. In the office of the Minnesota Mutual Life Insurance Company in this city.

Q. What was said at that time between you and Mr. Trubey?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

A. Mr. Trubey I think was introduced to me by Mr. Putnam. Mr. Putnam stated at the time that Mr. Trubey had been a member of the company for some time prior to October 1st.

Mr. BYERS: I move to strike out what Mr. Putnam said, on the ground that as to this case it is hearsay evidence.

Mr. PALMER: The statement was made in Mr. Trubey's presence. Mr. Putnam stated that Mr. Trubey had allowed his policy
699 to lapse, that he wanted to reinstate it. I asked Mr. Trubey to be seated, he took a chair at the table at which I was sitting; and he told me that he had allowed his policy to lapse by reason of not paying the September annual dues; or in other words, that he had not paid the annual dues in September, for the reason that he had heard some rumors about the company's bad condition, and he had on further investigation satisfied himself that the company was in good financial condition, and bound to succeed; and for that reason he wanted to place his policy in force again. I am not sure, I am not positive—but I am quite positive that he said he didn't receive notice of the annual dues, but knew the dues were payable during the month of September.

Mr. BYERS: He said he knew that.

WITNESS: Yes, sir, he did.

Mr. MITCHELL: Go on please.

Mr. PALMER: He said he failed to pay them, for the reason that he had heard so many rumors about the bad condition of the company. I asked him if he had recently changed his office, I think it was in the Masonic building, I think he mentioned the room and gave the number of the room where he had been for a number of years. I told him—well, before that he asked me if the company had perfected its re-organization, and I told him that it had. I told him it had been re-incorporated under the statute which was passed at the last session of the legislature, and that it had become a legal reserve company. I asked him if he didn't think that in re-instating his policy it would be a good idea to take out one of the
700 new form of policies, under which he could secure a guaranteed surrender value; that the mortuary assessment policy was one which was only good while he paid, and as soon as he ceased paying the insurance ceased. I told him the probabilities were that the assessments would increase to some extent in the future but how much the increase would be I couldn't say. He said he thought quite likely in the future he would take out the other form of policy, but he preferred at this time to re-instate the old certificate. I told him that under the circumstances he could do it without a medical examination, if he would sign a health certificate. He said—well he thanked me, and he said that was all right, that he didn't quite like the idea of signing a health certificate; he said "I am here, you see me, you know whether I look to be ill or not." I told him I thought he had the appearance of being well, but of course that didn't cover the question; and that it would be necessary for him to sign the health certificate, although as far as my knowledge extended, I never knew of the company in a case of this kind having in the past made any defence upon a death claim, on account of any representations made in a health certificate, although the purpose of the health certificate was in order to make the assured or the applicant responsible for the statements contained in

it. He said he would sign the certificate, and I sent for a blank and it was filled out and he signed it there in my office, in my room, and paid me the money and I turned it over to the cashier with the health certificate.

701 Mr. BYERS: Complainants move to strike out all the evidence of the witness with regard to the conversation had with Mr. Trubey, on the ground that it is immaterial, incompetent and irrelevant, and not within the issues in the case.

A certain paper is now marked Defendant's Exhibit 43.

Q. I call your attention to this paper marked Defendants' Exhibit 43, you know what that is?

A. Yes, sir.

Q. State what it is.

A. That is the health certificate which Mr. Trubey signed, as I stated.

Mr. BYERS: I move to strike out the answer of the witness on the ground that it is not responsive to the question, and is immaterial, incompetent and irrelevant.

Q. Did Mr. Trubey sign Exhibit 43 in your presence?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

A. He did.

Q. On what date was this Exhibit 43 signed?

A. October 10th, 1901.

Counsel for defendants offers in evidence Exhibit 43.

Mr. BYERS: I object to the introduction of the paper on the grounds that it is immaterial, incompetent and irrelevant.

Q. What money was it that Mr. Trubey paid to you at that time?

Mr. BYERS: We object to it as immaterial.

A. Well, it was the amount that he should have paid as annual dues.

Q. For what year?

702 A. For the fiscal year of the company commencing September 1, 1901, and ending August 31, 1902.

Mr. BYERS: I want to understand whether it was a year's dues in advance.

WITNESS: Yes.

Q. Was that what is commonly called the September 1901 annual dues?

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Mr. Palmer, the plaintiff Mr. Trubey at the time that his testimony was taken on behalf of complainants, testified as follows:

Mr. BYERS: From what are you stating that?

Mr. MITCHELL: I am stating it from the testimony, from a copy of the testimony; if it is not correct of course it will cut no figure.

Mr. MITCHELL: Question by Mr. DILLON: "Did they ever offer you other inducements or any other reason for changing the policy?" And the witness said "Both the president of the company and also the two representatives whose names I have mentioned stated the fact that unquestionably the assessments would increase until they became a hardship to pay, giving as a reason for said increase that the younger members had been solicited by them and had changed their certificate to the new guaranteed option policy, thus leaving the older members in the mutual association, under the mutual association plan, and hence the rate of mortality would very rapidly increase." Did you tell Mr. Trubey at the time of that con-
703 versation with him or at any other time that the younger members had been solicited and they had changed their certificates and had left the older members under the mutual association plan?

A. I did not say that to Mr. Trubey or to any other person.

Q. I will ask you to state whether or not you told Mr. Trubey the matter I have just read?

Mr. BYERS: I object to the question as immaterial, and also because the witness has already answered the question.

A. I stated to Mr. Trubey at this interview of October 10th——

Mr. BYERS: I object to the witness answering in this manner, because the question is one that should be answered by yes or no.

Mr. PALMER: I told Mr. Trubey that in all probability there would be a further increase in the number of assessments levied, but just how much the increase would be finally, neither I nor any one else could foretell. Beyond that I said nothing whatever to Mr. Trubey about the increase in the assessments; nor did I tell him that the reason for an increase in the assessments was that the younger members had been solicited and had changed their certificates to the guaranteed option policy, leaving the older members under the old plan.

Q. Will you state from the books the total amount of insurance written, and the total amount of insurance terminated or ceased to be in force, and the net amounts in force at the close of the year for each year from the year 1891 up to and including the year 1898, I mean of course, insurance in the defendant company.

704 Mr. BYERS: You want to put this in up to the year 1898?

Mr. MITCHELL: Yes. We want to put it in up to the time this transfer of business commenced.

Mr. BYERS: You might just as well let the whole matter go in, because I shall want it on cross-examination.

Mr. MITCHELL: If you want to put it in you can ask for it when you get to your cross-examination.

Mr. PALMER:

Year.	Ins. written.	Terminated.	In force at close of year.
1891	4,110,000	770,000	15,154,000
1892	12,872,000	2,622,000	25,404,000
1893	5,766,000	7,492,000	23,678,000
1894	4,350,000	4,542,000	23,486,000
1895	4,842,000	3,702,000	24,626,000
1896	3,122,000	3,708,000	24,040,000
1897	3,032,000	2,530,000	24,542,000
1898	2,166,000	2,528,000	24,180,000

Q. Mr. Palmer, state fully and generally the conditions and causes surrounding the defendant company which brought about this plan for transfer, which was inaugurated on or about January 1, 1899.

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

A. For several years prior to 1898 the records of the company and its experience disclosed the fact that the mortality rate
705 was rapidly increasing, while the aggregate amount of insurance in force was not materially increasing, but in fact, in some years was decreasing, and that the average age of the members was gradually increasing, although the best efforts which the officers of the company could put forth to secure new business were put forth; and it was apparant that there would be an increase in the number of assessments which would be necessary to care for the death losses from year to year in the future. Moreover, insurance journals throughout the country were constantly and bitterly attacking the plan of assessment insurance. The insurance departments of the several States were very much opposed to assessment insurance, and in their annual reports almost without exception, referred to assessment insurance as not feasible; and a large number of assessment insurance companies had failed and were failing from year to year, until assessment insurance was made exceedingly unpopular in the minds of the public and very unsafe. Some of the legislatures adopted legislation hostile to assessment insurance companies. In the State of Massachusetts the writing of assessment insurance was prohibited by the legislature.

The trustees considered the matter very carefully, and finally called in for consultation and advice at least two, and I think three different actuaries, including David Parks Fackler, who to-day is I believe the oldest actuary in this country, and stands foremost among them. As I said before the trustees asked their advice.

These actuaries after investigating the affairs of the company,
706 advised that an increase, and a very marked increase——

Mr. BYERS: I object to the witness stating what the actuaries advised, as not being the best evidence of that matter, but only hearsay. He should state what the company did.

Mr. PALMER: I was asked to state the reason for what the company did.

Mr. BYERS: That is the objection I make. I object to any statement as to what the actuaries said or advised, as being hearsay evidence.

WITNESS: These actuaries advised that an increase in the number of assessments must be made within a very short time, and that if they were not very materially increased, and within a very short time, it -s only a matter of a few years when they would become so great in number as to cast an almost unbearable burden upon the older members, because as the assessments increased in number the younger members would naturally drop out and join younger or newer companies or fraternal societies, or seek insurance in old line companies, leaving the older members with an increased mortality to bear the entire burden, and that would result in their finally dropping out and winding up the affairs of the company.

Mr. Fackler advised——

Mr. BYERS: I object to any statement made by Mr. Fackler, as being hearsay evidence and also as immaterial, incompetent and irrelevant.

WITNESS: Mr. Fackler advised that an increase from
707 thirty assessments per year to fifty assessments per year should be made at once; and that this might possibly enable the company to continue indefinitely without further increase, but he doubted it. He advised, as an alternative, that while the company was in good financial standing, its mortality low, and its average age comparatively low, that the company endeavor to place its insurance on what is known and commonly spoken of, or was at that time, as the stipulated premium plan. That is an assessment policy which provides for the payment of a stated sum at a stated time, as an advance assessment or premium, with a clause incorporated in the policy providing that on a certain condition, upon the happening of a certain event, a member might be called upon to pay an increased amount, or failing so to do that such an amount be charged against his policy, or his insurance be scaled down.

This matter was very carefully considered by the trustees, in connection with the other matters which I have related, and after further talk and further advising with the actuary, and receiving directions and advice as to the method of carrying out this last proposed plan and putting it into execution, and after consulting with the company's counsel, the trustees finally adopted the plan last suggested by Mr. Fackler, and directed the officers to carry it into effect by the issuance of policies, and by soliciting the members or

inducing them to make the exchange, after they had considered it fairly and thought it best for their respective interests to do so. Mr. Fackler's plan also contemplated the writing of new insurance upon the same plan.

708 Q. State Mr. Palmer——

A. I have not quite completed my answer. At the close of the year, or as the year 1898 closed, as the end of the year approached, the records of the company disclosed the fact that there had a been a very great loss during that year in the volumn of insurance; that there would be a lapse of policies equal to a hundred and fifty per cent. of the new insurance that was written, and at that rate——

Mr. BYERS: You say that was in 1898?

WITNESS: In 1898, as I recollect it; that the lapse in 1898 was very large, in excess of the amount of new insurance written during that year, and that taking the records and following them down for the past four or five years, and taking into consideration the results of the year 1898 and the existing conditions which I have described, the trustees concluded that the only thing there was to do was to adopt the last plan suggested by Mr. Fackler, if the life of the company was to be perpetuated.

Q. State and describe the plan that was followed in that transferring of members who held mortuary assessment certificates to this new form of policy.

A. Mr. David Parks Fackler was retained as actuary, consulting actuary. He prepared a table of premium rates for all ages under the new form of policy which I have described, and advised that——

Mr. BYERS: I wish to enter my objection again to the statement as to what was advised by Mr. Fackler, as not responsive to
709 the question, and as immaterial, incompetent and irrelevant, and also as hearsay. The question is what was the plan adopted?

WITNESS: Mr. Fackler prepared a table of premium rates for all ages under the new form of policy that I have described, and advised that every member of the company be given an opportunity to exchange his mortuary assessment certificate for one of the stipulated premium or so called guaranteed option policies, paying the premium for his then age at the time of the exchange. A table of guaranteed options was also prepared by Mr. Fackler, and he advised that the party exchanging be allowed to make the exchange without any medical examination. Mr. Fackler prepared a form of application for exchange, or directed one to be prepared, and also prepared a form of policy; I don't know but there were two forms of policies, which I think were formally adopted by the trustees. He also advised that the company make the burden as light as possible for those who made the exchange, and to do so he advised that a certain credit be allowed to each transferring member, to be used

in the reduction of the premiums on the new policy from time to time as they were paid. He advised that an amount equal to the member's payment or deposit in the guaranty trust fund, plus interest thereon at the rate of ten per cent. per annum during the first ten years the mortuary assessment policy was in force, and if in force more than ten years at the rate of five per cent. for each year in excess of ten years, be allowed as a credit on the premium
710 in reduction of the premiums; but that the members should not be allowed credit on any one premium for more than half the premium; that if the entire credit to be allowed them exceeded one half of the premium, then it should be distributed over at least a sufficient number of years, so that no premium would be reduced more than one half by the credit.

Mr. Fackler's advice was carried out by the officers under the advice and with the knowledge of the trustees; not always upon formal resolution of the trustees, but at the monthly meeting the proceedings and actions of the officers in making the transfers were reported to the trustees, and approved, in writing sometimes, but generally by oral statement, and by showing the transactions and the different forms of policy, application, etc. that were used. The amount which was credited on each of these premium payments from time to time, as they were made by the members, was charged against the contingent fund and credited to the premium fund; but no money or its equivalent was ever paid out to any member, to the extent of one dollar, by reason of these credits. All of the funds remain still in the hands of the company. It was simply a matter of entries upon the books.

Q. I will ask you to state whether or not this scheme of transfer as prepared by Mr. Fackler, and as carried out by the company was limited in its application to members holding mortuary assessment certificates of any specified age.

Objected to by counsel for plaintiff as immaterial incom-
711 petent and irrelevant.

A. No, sir. Every privilege which was granted to one member was granted to every other member similarly situated. There has never been any discrimination between members to any extent whatever.

Q. Have the members of the company under the mortuary assessment certificate plan, of the older ages, been notified or solicited to transfer, the same as the younger members?

Objected to by counsel for plaintiff as immaterial, incompetent and irrelevant.

A. Every member of the association has been formally notified of the changes that were being made, and requested to exchange his assessment certificate, if he saw fit so to do. Most all of them have been visited by some agent or representative of the company, or

have called at the home office and had the matter explained to them there.

Q. Has the company put a stop to these transfers, that is, did the company ever set a time after which no transfer could be made?

A. No, sir.

Q. State whether or not the company now permits members under the mortuary assessment certificate plan who desire to transfer to these forms of policy now being issued by the company, whether they are permitted so to do.

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

A. They are.

Q. You say that there has been no discrimination or classification of members on account of age, or the manner or term of their transfers.

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Counsel for plaintiff objects to the question as immaterial, incompetent and irrelevant.

A. No, sir. Of course the premiums which were charged on the new form of policy were not uniform, regardless of age; but every man of like age was charged a like premium.

Q. I understand that there were two forms of policy issued. One, where the new premium was based on the attained age, and another called a lien policy, where the premium was based on the original age of entry as a mortuary assessment certificate holder; will you explain in a general way, these two forms of policy, and the manner of the transfer?

A. Originally the one policy which I have described was the only one used. In soliciting members to make the exchange it was discovered that members, older members, some of them, felt that they were unable to pay the premium, because the premium (it doesn't make any difference what plan it was under) after they reached the age of fifty-five or sixty is very much higher in proportion than it is on the younger ages, due to the excessive or increased mortality. It was found that it was going to be harder for the old members to transfer and pay the attained age premium, and so the actuary was again consulted and applied to for some relief in the matter; and he devised what is commonly called the lien policy, which has been commonly spoken of as the lien policy. That policy by its terms is deemed to have been dated and to have taken effect as of the date when the member took out his original mortuary assessment certificate. The premium charged was a premium according to the table rate furnished by Mr. Fackler for the age of entry, that is the age when the member first took out his mortuary assessment certificate. Both of these forms of policy provided that the company should maintain a reserve for each policy based on the actuary's or combined experience table of mortality,

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with four per cent. interest. Under the first policy referred to, that is, the attained age policy, the reserve was reckoned from its true date, that is, the date when it was actually executed and delivered. The reserve under the terms of the lien policy was reckoned and charged from the date of the member's mortuary assessment certificate, the date when by the terms if the lien policy it was deemed to have taken effect.

The reserve liability arises from the accumulation of a certain part of the premium which is paid from the inception of the policy. Under the lien policy, although it was deemed to have been dated as of the date of the mortuary assessment certificate, and was based upon the premium for that age, it had not been maintained or carried by the actual payment of that premium. The member had only contributed his assessment according to his mortuary assessment certificate, and that was simply the actual mortality cost, leaving the company without any reserve whatever, on account of his not having paid the premium or that portion of the premium represented by the reserve. Consequently, it was necessary for the com-

714 pany, and it was so advised by Mr. Fackler——

Mr. BYERS: I object to the witness making any statements as to the advice of Mr. Fackler, as immaterial, incompetent and irrelevant in this case, and as hearsay.

WITNESS: To charge against the policy a lien, equal to the reserve which would have accumulated and which would have been held for the policy, had the member in fact been paying the level premium stipulated in the policy from its assumed date. But the amount of this lien was always considerably below the actual reserve by reason of a credit which was allowed in reduction of the lien, in lieu of a credit in reduction of the premium, as was allowed under the attained age policy. This form of lien, not exceeding the reserve, had been approved by insurance departments for many years. I will say, this lien policy was issued, and while it was prepared, and was devised primarily to enable the older members to exchange their mortuary assessment certificates, every member was given his choice, he could take the other form of policy if he wanted to do so, and as a matter of fact, many of the younger members did take lien policies, and very many of the older men took guaranteed option policies; and many men of seventy years of age exchanged their mortuary assessment certificate for one of the two forms of policies I have mentioned.

Q. Now, Mr. Palmer, you have stated that the members were all treated alike, and that they were all given an opportunity to transfer from one of these mortuary assessment certificates, under one

715 of these plans of transfer. Was any action taken by the company or the trustees towards making this scheme of transfer compulsory on the mortuary assessment certificate members? If so, state what that action was.

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as calling for the conclusion of the witness.

A. No, sir, there was no such action taken. It was always a matter of choice with the members whether they transferred or not. They were advised it was for the best interest of the company that all of the members should transfer; but they were always told that it was optional with them whether they did transfer or not; that if they continued to carry out their old mortuary assessment certificates according to their terms, that the company would absolutely carry it out on its part.

Q. Was any literature or circular letters relating to the necessity of transferring circulated or distributed by the company among the mortuary certificate holders?

A. I wrote numerous letters to the individual members and so did Mr. Putnam, the secretary; and the trustees, a good many of them, wrote letters. There was a formal circular sent out, prepared by me, sent to each of the mortuary assessment certificate members in 1901.

Q. I will ask you to produce that?

A. Here it is.

A certain paper is now produced by the witness, and is marked Exhibit 44 hereof.

Q. I will ask you to state what Exhibit 44 is.

716 Mr. BYERS: I will admit that Exhibit 44 was sent to all the mortuary assessment certificate members.

Q. I will ask you to state from the books of the company the number of deaths among the mortuary assessment certificate holders and the number of assessments levied upon the holders of mortuary assessment certificates to pay death losses, for each year since 1884, commencing with the year 1885.

Witness produces a memorandum.

Q. Is that it?

A. Yes, sir.

Mr. BYERS: I will admit that the witness may answer from this memorandum.

Mr. MITCHELL: We only need it as far as it is contained in columns 1, 2 and 4 of the memorandum.

Mr. BYERS: Very well.

The memorandum referred to which is admitted to contain the answer of the witness is as follows:

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Year.	Number of certificates ceased by death each year.	Number of assessments levied each year.
1880		
1881		
1882		1
1883		5
1884		5
1885	17	17
1886	34	23
1887	35	25
1888	41	25
1889	47	30
1890	54	30
1891	31	10
1892	75	20
1893	114	30
1894	115	30
1895	124	30
1896	107	30
1897	126	30
1898	143	30
1899	149	30
1900	93	32
1901	54	42

718 Q. I will ask you Mr. Palmer to give the amount in the guaranty trust fund on July 31st, 1901, and by guaranty trust fund I mean not only the guaranty trust fund proper, but the mortuary reserve fund joined with a portion of the guaranty trust fund.

A. July 31st, 1901?

Q. Yes, July 31st, 1901.

A. $184,129.50, plus $417,347.86.

Q. Now I will ask you the amount in the guaranty trust fund on August 5, 1901, which had been contributed by persons who were then holders of mortuary assessment certificates.

Mr. BYERS: I object to this as immaterial, incompetent and irrelevant.

Mr. MITCHELL: I give the same meaning to the guaranty trust fund as before.

Mr. BYERS: That is, both funds?

Mr. MITCHELL: Yes.

A. $83,110.50.

Q. Now give the amount in the guaranty trust fund on December 31, 1901, which had been contributed by persons who were on that date holders of mortuary assessment certificates?

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.

A. $63,149.50.

Cross-examination by Mr. BYERS:

Q. Mr. Palmer, you stated that during the year 1898 the amount of insurance in force and the additions and lapses for the years from 1891 to 1898 inclusive, was a certain amount. Will you
719 state the same facts in relation to the insurance in force during the years 1899, 1900, 1901, down to December 31, 1901?

A. I can give it you; but as our records are kept under the direction of the insurance department, it may be misleading as to certain amounts, for the reason that in the amount of insurance we had to include our guaranteed option policies, although they were written as transfers; and among these policies that ceased are included mortuary assessment certificates which were cancelled when exchanged. I can give you the amount of insurance in force in each year, and that will show the amounts in that way. I can also give it you of course, just as I have stated.

Q. I would like to have the records, as you gave them.

A. Down to and including the year 1898, there was no form of insurance contract in force or written other than the mortuary assessment certificate. Commencing with the year 1899 the stipulated premium or guaranteed option policy was issued. New business was written on that policy and on that form of policy, and that policy was used in making exchanges of mortuary assessment certificates from that time on. Under the rulings of the insurance department, our guaranteed option policies issued in exchange for mortuary assessment certificates are required to be reported as insurance written; and all mortuary assessment certificates which were cancelled, when the new policies were issued in their places, were required by the insurance department to be reported as policies ceased. Therefore, the figures which I give as to the amounts
720 of insurance written and the amount of insurance lapsed during the years 1899, 1900, 1901, differ from the figures which were given for the years prior to 1899 in the respects which I have stated. Prior to the year 1899 all insurance written was actually new insurance, and all insurance terminated was insurance which actually did terminate, either by death or lapses. Now in 1899 policies were issued to the amount of $5,092,500, and certificates ceased or terminated to the amount of $7,111,000, leaving insurance in force at the close of business on December 31, 1899, $22,161,500. In 1900 policies were issued to the amount of $6,913,000, and policies were ceased or cancelled to the amount of $10,634,500, leaving insurance in force at the close of the year 1900 to the amount of $18,240,000. Policies were issued in the year 1901 to the amount of $3,274,500, and ceased or were cancelled to the amount of $6,013,000, leaving insurance in force at the close of the year

1901 of—I find I have given you the wrong figures for 1901. The figures I gave you were for only a portion of the year. I have the correct figures for 1901. The figures which I have given you heretofore as for 1901 are not up to December 31, 1901, but as of July 31, 1901.

Q. Then up to that time there were so many issued, and so many terminated?

A. Yes, sir. For the whole year 1901 there were policies issued to the amount of $4,566,129.00. During the entire year of 1901 there were policies ceased or cancelled to the amount of $8,645,500, leaving insurance in force at the close of the year 1901 to the amount of $14,160,629.00.

721 Q. Now then you stated that the lapses for those prior years was and had been considerably in excess of the business, and that continued to be the case after 1898, as well as before it?

A. Yes, sir.

Q. Had you come to the conclusion, Mr. Palmer, in 1898, that this plan of assessment insurance was practically a failure, as an insurance proposition?

A. The trustees and officers had come to the conclusion that the assessment proposition, as far as securing new business——

Q. I don't mean that, I mean in general.

A. No, we had not come to the conclusion that it was a failure, because the company could carry out every contract that it had on its books.

Q. But as far as getting any new business was concerned, it was a failure?

A. Yes, sir, it was practically a failure. The assessments were bound to increase in the future, and the members would not carry out their part of the contract.

Q. You say that in this conversation you did not state to Mr. Trubey that the younger members had been solicited to take guaranty option policies, but that you did on the contrary state that all of them had been solicited to take it equally, or words to that effect?

A. I don't think I stated that.

Q. You say you did not say that the younger members had been particularly solicited to take guaranteed option policies?

722 A. Yes, sir, I did, but not to the exclusion of the older ones. That is so. I did not make any such statement to Mr. Trubey.

Q. Isn't it a fact that since 1898 the younger members have taken these guaranteed option policies in a greater proportion than the older ones?

A. I think our records show that there is a slightly larger proportion of younger members who have taken it. Well, I don't know either, I wouldn't say so. No, I can't say that.

Q. Isn't it a fact that in 1898, December 31, 1898, that two thirds of the total membership of the association on the mortuary assessment certificate plan were under fifty years of age?

A. I wouldn't say that. I think that the average age was under fifty.

Q. How many members have you at the present time under the mortuary assessment certificate plan?

A. Do you mean at the present time?

Q. Well, I will ask you as to December 31, 1901.

A. I have not December 31, 1901, but I have January 31, 1902.

Q. Well, January 31, 1902, will answer the purpose.

A. Well, there were 1338 membership certificates in force, of course there were not so many members.

Q. I understand; some of them held more than one membership?

A. Yes, sir.

Q. Isn't it a fact Mr. Palmer, that two thirds of those members or of those memberships are over the age of fifty years at this time?

A. I couldn't say that; but the average age of these mem-
723 bers is over fifty years.

Q. And considerably over fifty years, isn't it?

A. It is fifty-four years.

Q. The average age is fifty-four years?

A. Yes, sir.

Q. Well, seeing you have those averages, can you tell the average age of the members under the mortuary assessment plan December 31, 1898?

A. Yes, sir.

Q. What is it?

A. 46.12 years.

Q. You stated that in relation to this plan of the guaranteed option policy, that in carrying it out the members transferring were allowed some credits. I understand you have detailed the method of arriving at the amounts of credit and you stated that these credits were drawn from the contingent fund of the association and charged to the premium fund, what was taken out of the contingent fund?

A. I didn't state it was drawn from the contingent fund.

Q. You stated it was credited to the contingent fund and charged to the premium fund. What was the contingent fund?

Mr. MITCHELL: I object to this as immaterial.

A. The contingent fund was composed chiefly of surplus from time to time in the operating fund.

Q. This fund was one of the funds of the association; and all the money in that fund had been contributed by members under the mortuary assessment plan, had it not?

A. No, I couldn't say that.

Q. Was it not either contributions, was it not composed either of contributions made directly by the members on mortuary
724 assessment certificates or of interest on the funds of the association?

A. Yes, that is right. It was composed of contributions of members who had been members on the mortuary assessment plan, and of interest on investments, of funds which had been contributed by members who had been under the mortuary assessment plan.

Q. Now will you state what was the principle source of interest to the association?

A. When?

Q. At all times since 1891. From what was the interest principally derived, or whence was it derived, put it in either shape?

A. Prior to January 1st, 1899, from interest on Government bonds, and since that time it has been derived from a good many sources.

Q. These Government bonds were the bonds which made up your guaranty trust fund?

A. They were bonds, most of them were bonds in which the guaranty trust fund was invested. They were Government bonds that had been purchased by other funds some times, but not any very large amount.

Q. Not any very large amount?

A. No.

Q. So that the principal source of interest was the bonds in which the guaranty trust fund had been invested?

A. Yes, prior to January 1st, 1899.

Q. Why was the mortuary reserve fund separated from the guaranty trust fund proper, and thus divided the guaranty trust fund into two parts on your books?

A. It was never in fact divided. There were two accounts
725 opened on the books, for the purpose of at all times furnishing the officers and trustees with information as to the amount of the guaranty trust fund then represented by the deposits or payments therein or thereto by the then holders of mortuary assessment certificates.

Q. What particular reason was there for wanting that information?

A. The trustees and officers always wanted to know just how the guaranty trust fund stood, they always want to know how it stands, with reference to its use, and as to whether if it was used how much had been drawn, without in any way withdrawing any deposit that had been made by members who still held their mortuary assessment certificates; and also for the purpose of showing just how much of the guaranty trust fund had been built up by persons who had either died or who had cancelled their mortuary assessment certificates. The main object was at all times to know how much had been contributed, and how much in the guaranty trust fund was made up of the deposits of the then holders of mortuary assessment certificates.

Q. I don't still understand why the fact of the money in the funds having been contributed by one member or another will make any

difference. Can you tell me why it would make any difference to the association?

A. It wouldn't make any difference. The company spends thousands of dollars every year to keep records which don't make any difference with regard to the company, any more than to keep the officers posted with regard to the association and the condi-
726 tion of its affairs. Just the same as it has been able by keeping these records, to furnish you with information which ordinarily would not have any effect upon the running of the company itself.

Q. I think you stated the creation of the lien policy was to make the transfer from the mortuary assessment plan to the guaranteed option policy less burdensome to the older members of the association.

A. Yes, sir.

Q. And that was accomplished you say by dating the policy back to the age at which the member had entered the company on the mortuary assessment plan, and charging him with a premium based on his then age, and taking from him or having him consent to the creation of a lien on the policy to the amount of the reserve that would have accumulated if the policy had been issued at his age of entry; is that correct?

A. I think you had better have the reporter read my testimony, and that will give you the idea of what my testimony was, without your repeating it every moment.

Q. I want to get at the idea how that lien was created. Isn't that practically the method?

A. As far as it goes it is substantially correct.

Q. Then if he had been a member or if he had made contributions to the guaranty trust fund, a credit was allowed him, as you have stated?

A. Yes, sir.

Q. In reduction of this lien?

A. Yes, sir.

Q. So that at the time this lien was created no money had ever been paid in to the company as the reserve, and no money had ever been received by the company, and nothing was paid by the
727 member at any time as a basis for this lien; but as far as actual cash was concerned, it was a fictitious transaction, was it not?

A. I can't answer that question.

Q. Was there any actual cash concerned in the transaction?

A. What transaction do you refer to?

Q. In obtaining this policy and in the creation of the lien.

A. Yes, sir.

Q. What was the cash?

A. I can't tell you the amount, but it was always cash.

Q. Was cash received in any case?

A. Cash towards the payment of the premium and some times cash towards the payment of the lien.

Q. But as a rule if any cash was paid on the lien it would reduce the lien to that amount, the amount of that payment, wouldn't it?

A. I should think that would ordinarily be so.

Q. Then so far as the lien stands upon the books of the company, no cash whatever was paid or received for that lien, was there?

A. I don't know what you mean by, as far as the lien stands on the books of the company, what do you mean by that?

Q. Your books show that against each policy a certain lien is charged, do they not, where it is a lien policy?

A. As far as our books show there is a lien on the policy, the lien has not been paid.

Q. The lien has not been paid?

A. No, sir, not when our books show it has not.

Q. When this lien was created was there any money paid?

A. Sometimes.

728 Q. Does the amount of money represented by that lien involve the payment or receipt of any money?

A. I don't know what you mean.

Mr. BYERS: I think you understand my meaning.

WITNESS: Well, I don't. Just read the question.

Q. Isn't it a fact that when a lien was created upon a given policy, so far as the amount of that lien is stated to be, that no money whatever was paid or received?

Mr. MITCHELL: I object to the question as immaterial and irrelevant, and on the ground that the witness has already fully answered the question and given the method of issuing lien policies.

A. I don't know what you mean exactly, your questions are so involved, all of them, it is difficult to answer them. I can say this: that if a lien note when it is delivered states a lien, it states it as a net lien. Of course it was a lien as it stood at the time of the transaction, when the transaction was consum-ated. In other words, there was nothing stated in the lien note as a lien, when there was not a lien. Of course, if it had been paid it was not a lien, and it wouldn't have been stated as such.

Q. That lien represented no cash payment of any description?

A. Not as far as it was stated in the lien note itself.

Redirect examination by Mr. MITCHELL:

Q. You stated certain causes or conditions of the loss of membership in this company during the years prior to 1898 and
729 since; are there any other causes or conditions that brought about the loss of membership?

Mr. BYERS: I object to this as not proper re-examination, and also as immaterial and irrelevant.

A. There are.

Q. State what they are.

A. The fact of the frequent assaults on the company in the nature of indictments and lawsuits, the circulation of false letters and statements among the members, the making and filing of complaints containing all kinds of sensational and serious charges, which if true would have established the committing of several different felonious acts on the part of the officers and trustees; the publication or the causing of the publication of these various matters in the daily press flashed over the wires by the Associated Press Company; all of them being the result of the acts of a man by the name of Edmund D. Carter, who with his co-conspirators from time to time since 1897 down to the present time has been pursuing the company.

Mr. BYERS: I move to strike out the oration of the witness, on the ground it is immaterial, incompetent and irrelevant, and not responsive to the question.

WITNESS: And the lapses during the two or three years, on account of those assaults, have taken from the company a great many of the younger men; and that of itself has done more to make the average age of those remaining under the mortuary assessment plan greater today than of those who hold stipulated policies than any other agency.

730 Mr BYERS: I make the same motion to strike out the evidence of the witness as I did to the last statement.

Q. Have you received communications from members with regard to any of the assaults which you have spoken of, and if so to what extent?

Mr. BYERS: I object to this as immaterial, incompetent and irrelevant, and as not proper re-direct examination, the matter not having been gone over on prior examinations.

A. During the years 1898 and 1899 the company has received a great many letters bearing upon these different assaults.

Q. From whom?

A. From members of the company, and after the commencement of the present action letters for a week or ten days flowed into the office and these letters were all accompanied by a circular purporting to have been sent and issued by the plaintiffs in this suit, reciting that a suit had been instigated at the request of a very large number of policy holders, asking for the appointment of a receiver and injunction, warranted by the action of the officers of the company, on the ground of gross mismanagement of the company and misappropriation of its funds, and requesting the members to send an executed power of attorney directing their attorneys Messrs. Dillon & Goetz, of Chicago, and Mr. John F. Byers, of Minneapolis, to enter their names in the suit, and to represent them.

Mr. BYERS: I move to strike out this answer of the witness, as immaterial, incompetent and irrelevant, and not proper re-direct examination.

731 Q. At the time of the taking of testimony in behalf of the defendants in the city of Chicago, when the testimony of W. A. Renwick, Charles Miller and others was taken, those witnesses produced certain circular letters which were attached as exhibits, purporting to be issued over the signature of J. C. Iverson and Samuel Wright; I will ask you to state if those exhibits are some of the circular letters to which you referred in your testimony.

Mr. BYERS: I object to this as immaterial, incompetent and irrelevant, and as not proper re-direct examination.

A. These circular letters were received by the officers of this company from those gentlemen, and were produced by the company at the time of the taking of those depositions, and all of the circulars were of that form.

Q. You were present at the taking of the testimony on deposition on behalf of the defendants before Commissioner Marshall Sansell of Chicago and before Commissioner Henry D. Goodwin of Milwaukee, were you not?

A. In this case?

Q. Yes.

A. Yes, sir.

Q. Do you recollect in a general way the testimony that was given before these commissioners with regard to the acts of one Edmund D. Carter and others in their assaults upon the company, in criminal and other proceedings instituted by them against the officers and trustees of this company?

A. Yes, sir.

732 Q. State whether or not at the time of these various assaults that were made by Carter and others, the fact of their being made was or was not widely published in the newspapers and in the press of this and other States.

Mr. BYERS: I object to this testimony as immaterial, incompetent and irrelevant, and as not being within the issues in the case.

A. They were to my knowledge in this city and in this State and in Wisconsin; and many of the publications which appeared in the press of this State were items of the Associated News, or the Associated Press, I believe that is the name, the Associated Press, which I understand is established for the use of the members of the Associated Press, and disseminates news thoughout the civilized world.

Q. Was that portion of the guaranty trust fund which was for bookkeeping purposes carried on the books of the company in the mortuary reserve fund, ever put to any use or applied to any purpose different from that for which the guaranty trust fund proper was used or applied.

Mr. BYERS: I object to the question as immaterial and incompetent, and calling for the conclusion of the witness.

A. No, sir.

Recross-examination by Mr. BYERS:

Q. You don't regard the interest on the guaranty trust fund there as any part of the fund itself?

A. It has never been treated as any part of the guaranty
733 trust fund itself, from the organization of the company.

Q. It has never been treated as a fund?

A. The articles provided for what purpose that should be used.

DOUGLAS PUTNAM, recalled on the part of the defendants, testifies as follows:

Examined by Mr. MITCHELL:

Q. Mr. Putnam, will you state from the books of the company the amount of insurance in force in this company in the year 1899 and also at the end of the year 1900 and at the end of the year 1901 on the guaranteed option policy plan, that was held to cover the lives of persons who had formerly been members of the defendant company on the mortuary assessment certificate plan?

Mr. BYERS: I object to this as immaterial.

A. December 31, 1899 the amount of such insurance in force was $3,859,500; on December 31, 1900, it was $9,142,000; on December 31, 1901 it amounted to 11,172,129.00.

Q. Give the amount of such insurance in force on July 31, 1901.

A. $11,001,500.

Q. In your direct examination as a witness for the complainant, you testified as to the total insurance in force in Minnesota in the defendant company on December 31, 1900; and stated the total insurance in force in Minnesota in the defendant company on
734 December 31, 1901. You also testified as to the total amount of insurance that ceased to be in force during the year 1901, which as I recollect it, amounted to $5,186,000 which ceased to be in force in Minnesota. Those figures, as I recollect it, were taken by you from the annual report of the company filed in the office of the insurance commissioner of the State of Minnesota, were they not?

Mr. BYERS: I object to this because I think it appears in the testimony that they were taken from the books of the association.

A. Yes.

Q. On the books of your company, and in the reports filed in the office of the insurance commissioner, what was included under the heading, insurance in force in Minnesota for the year 1900 and prior years?

A. All policies issued to residents of Minnesota were considered Minnesota contracts, and always remained such on the books of the company, regardless as to subsequent residence, after they had once been created members, even if they moved out of the State they were still considered Minnesota policies.

Q. Then did the figures as to total insurance in force in the defendant company in Minnesota on December 31, 1900, contain a statement of the insurance in force that had been written on the lives of persons who at the time of the issuance of the respective policies were residents of the State of Minnesota, whether or not that policy holder had since removed from the State.

735 Mr. BYERS: I object to this as immaterial.

A. They did.

Q. On the books of your company, and in the records filed with the insurance commissioner of the State of Minnesota covering the year 1901, what was included under the heading, insurance in force in the State of Minnesota?

A. Simply insurance on those whose residence as shown by the postoffice addresses were in the State of Minnesota at that time, at the close of the year 1901, December 31, 1901.

Q. Why were these changes made in your method of describing the insurance in force there?

Mr. BYERS: This is objected to as immaterial.

A. Simply because it was the desire of insurance commissioner that the policies be so reported.

Q. Was this method of describing the insurance in force in the State of Minnesota for the year 1900 and prior years, that required by the insurance commissioner at that time?

Mr. BYERS: You mean prior to 1900?

Mr. MITCHELL: 1900 and prior years.

Mr. BYERS: I object to this as immaterial.

A. It was.

Q. What was the reason for making the change in this method of describing the insurance in force in the State of Minnesota at the end of the year 1901?

Mr. BYERS: I object to it as immaterial.

736 A. Simply because it was the request of the insurance commissioners in several of the States throughout the country, in the various States in this country.

Q. Did the commissioners give any reason for this change?

Mr. BYERS: I object to this as immaterial, and as not the best evidence.

A. Not that I am aware of. But it would appear upon the face of things anyway that it would be a more correct manner of averaging

the policies in the various States. Taking the conditions year by year it would be more correct in my opinion than to consider that a contract that was issued in Minnesota was always a Minnesota contract.

Q. Did the question of taxation have anything to do with the method of describing the policies upon the authorities in the various States.

Mr. BYERS: Objected to as immaterial.

A. Unquestionably it did.

Q. Then as I understand it, your books at the end of the year 1900 and your reports filed in the various insurance departments of the different States, in describing insurance in force in the State of Minnesota, classified as insurance in force in the State of Minnesota during those years, the insurance which had been written on the lives of persons who at the time of the issuance of policies resided in Minnesota, whether or not the policy holder had since removed from the State of Minnesota, is that correct?

Mr. BYERS: I object to this as immaterial.

A. That is correct.

737 Q. And that, as I understand it, at the end of the year 1901 the books of your company and your records as filed with the insurand commissioners of the various States classified under the heading of insurance in force in the State of Minnesota only those policies in force upon the lives of persons who at the end of the year 1901 were actual residents of the State of Minnesota, is that correct?

Mr. BYERS: I object to this also as immaterial.

A. That is correct.

Q. Then as I understand it, at the end of the year 1901, in order to comply with this new method of classification that had been adopted in the insurance department, you charged off on your books and in your reports for the year 1901 all insurance which you had formerly carried as in force in the State of Minnesota, where the policy holders had actually removed from the State of Minnesota?

Mr. BYERS: I object to this question as immaterial and also as leading.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, Mr. Putnam state what amount of insurance is charged off during the year 1901, on account of removals from the State of Minnesota.

A. $3,056,000.

Q. State what that amount represented.

Mr. BYERS: I object to this as immaterial.

738 A. That represented the amount of insurance carried by the policy holders who originally lived in the State of Minnesota, at the time they took out their policies, and who subsequently removed to other States, and whose insurance was then in force on December 31, 1901.

Q. When this insurance was charged off against the amount in force in the State of Minnesota was it credited to the amount of insurance in force in the other States?

A. It was in the various States to which the members had changed their residence.

Q. Does the amount of $3,056,000 that you have testified to as having been charged off during the year 1900 as against insurance in force in the State of Minnesota, represent the amount of insurance that actually ceased to be in force in the defendant company?

Mr. BYERS: I object to this as immaterial, incompetent and irrelevant.

A. No, sir, not at all. Simply it has been removed from the State of Minnesota to other States.

Q. Now Mr. Putnam I will ask you to state the amount in the premium fund of this defendant company on July 31, 1901 and also on December 31, 1901.

A. On July 31, 1901 there was in the premium fund of the company $932,580.28; and on December 31, 1901 there was in the premium fund of the company $1,032,281.62.

Mr. BYERS: These amounts you have given as being in the
739 premium fund of the company on these several dates, do they include all of the assets in the premium fund?

WITNESS: No. Those are the ledger assets, as shown by the ledger; and in addition to them there would be other items, non-ledger assets.

Mr. MITCHELL: Have you those items before you at the present time?

WITNESS: No, I have not.

Q. These non-ledger items are taken into consideration at what time?

A. They are taken into consideration whenever the financial statement is made. It is made in order to show the assets of the company and the liabilities of the company.

Q. The financial statement made to whom?

A. Made to the insurance department of this State and of the various States in which the company is doing business.

Q. Then they are made out for the purpose of determining the actual financial condition of the company, showing the relation of the assets to the liabilities of the company?

A. Yes, that is right.

Cross-examination by Mr. BYERS:

Q. In the year 1899 what was the amount of new insurance written on the guaranteed option plan, exclusive of those who had changed over from the mortuary assessment certificate plan?

A. We have not those figures here, as far as I recollect it.

740 Mr. BYERS: I wish you would look it up.

Mr. PALMER: We can give it you right here.

Mr. MITCHELL: It is right here I think.

Q. This statement in evidence of the funds in the premium fund on July 31 and December 31, 1901, includes all the liens so called that go to make up part of that fund?

A. It did.

Q. With regard to the insurance in force in the State of Minnesota which you have given, the decrease in insurance by reason of removal from the State — is the difference between these sums of $3,056,000 and $5,186,000 would represent the amount of decrease by reason of lapses and deaths?

A. It would.

TIMOTHY R. PALMER, recalled on the part of the defendants, testifies as follows:

Examined by Mr. MITCHELL:

Q. At the time of the examination of witnesses on behalf of the complainant, your testimony was taken with regard to the manner of charging up the operating expenses for the years 1899, 1900 and 1901, showing the different classes of policy holders; can you state in a general way without going into too much detail, the manner of charging the expenses, the operating expenses of the company for each of these years mentioned, to the different classes of policy

741 holders; that is, 1899, 1900, 1901, but you need not state the character of the different items that were charged, except in a general way.

A. At the close of each of those years the amount of insurance in force represented by the two classes, that is in the mortuary assessment certificate class and the stipulated premium or guaranteed option policy class, was arrived at by taking the amounts in force during each month of the year, and the proportion in each class to the total insurance in force. Then the items of expense were carefully gone over, and the items of expense which appeared to the officers of the company to have been incurred chiefly on account of the guaranteed option policies or stipulated premium policy holders were charged entirely to that class; and those expenses which appeared to the officers of the company to have been incurred solely on account of members holding mortuary assessment certificates were charged to that class, although the amount charged to that

class, the entire amount charged to the latter class was very small. Those expenses which seemed to have been incurred for the joint benefit or on their joint behalf, that is of the two classes, were charged to them proportionately, in the same proportion that the insurance of that class bore to the total insurance in force. In making the charges, wherever there was any doubt as to the class to which it should be charged, the doubt was always resolved in favor of the mortuary assessment certificate class, as I think will be shown by an itemized statement contained in the books.

Q. Now Mr. Palmer, will you state from the books of the
742 company the different items that were charged to the respective funds, and the manner in which the charges were made for the year 1899.

A. I do so by giving you a transcript from the books which I know to be correct as they were charged, because they were all entered under my directions.

Witness then produces a paper as his answer to the above question which is as follows:

Expenses Year 1899.

Total expenses.....		$101,734.42
Charged to premium fund:		
Commissions on guar. option policies.....	$32,357.86	
" " ordinary life "	91.36	
Med. fees " guar. option "	798.00	
" " ordinary life "	6.00	
		33,253.22
		68,481.20
Charged to operating fund:		
Commissions on assessment certificates.....	$4,094.10	
Medical fees " " "	594.00	
		4,692.10
Operating fund was charged with all remaining expenses, which aggregate.....		$63,789.10

This $63,789.10 is divided *pro-rata* between the several funds upon basis of insurance in force, to-wit:

743

Assessment.	Stipulated premium.
$99,884,000	$13,443,000

Operating fund proportion:

$\frac{99884000}{113327000}$ of $63,789.10 = 56,222.35

Premium fund proportion:

$\frac{13443000}{113327000}$ of $63,789.10 = 7,566.75

$63,789.10

Collection	2,683.49
Agents' salaries, etc.	10,023.80
Salaries officers	14,369.96
" employés	6,752.16
Taxes	1,248.23
Rent, home and agency offices	2,487.15
Legal expenses	10,205.24
Advertising	3,381.11
Stamps	3,754.77
Net advances to agents	3,475.58
Incidentals	5,407.61
Total	$63,789.10

Insurance in force $113,327,000. Divided as follows:

1899.	Assessment.	Stipulated premium.
July	$22,402,000	$1,091,000
August	21,024,000	1,629,000
October	19,938,000	2,842,000
November	18,564,000	3,675,500
December	17,956,000	4,205,500
	$99,884,000	$13,443,000

744 As shown in the foregoing statement, expenses aggregating $63,789.10 were pro-rated upon the basis of insurance in force, to wit:

Operating fund proportion.... $\frac{99884000}{113327000}$ of $63,789.10 = $56,222.35
Premium fund proportion.... $\frac{13443000}{113327000}$ of 63,789.10 = 7,566.75

Sub-divided as follows:

	Operating fund.	Premium fund.
Collection	$2,365.17	$318.32
Agents' salaries, etc	8,834.76	1,189.04
Salaries officers	12,665.38	1,704.56
" employés	5,951.20	800.96
Taxes	1,100.16	148.07
Rent, home and agency offices	2,192.13	295.02
Legal expenses	8,994.68	1,210.56
Advertising	2,980.03	401.08
Stamps	3,309.37	445.40
Net advances to agents	3,063.30	412.28
Incidentals	4,766.17	641.44
	$56,222.35	$7,566.75

Q. Will you state in the same manner from the books these various items of expense that were charged to the different funds during the year 1900?

A. I can best do so by giving you a transcript from the journal of the company which is fully itemized and explanatory,
745 which was made under my direction and supervision and which is as follows:

Expenses Year 1900.

Total expenses		$119,915.72
Charged to premium fund:		
Commissions on G. O. policies	$64,277.77	
Salaries & allowances agents	8,553.35	
Rent, agency offices	1,095.45	
Incidentals	1,303.13	
Med. exam. fees	138.00	
Med. library	1.00	
Furniture	1.00	
		75,369.70
Charged to operating fund:		
Furniture	271.25	
Medical library	27.65	
		298.90
		$75,668.60
Operating fund was originally charged with all remaining expenses aggregating		$44,247.12

This $44,247.12 was divided *pro rata* December 31, 1900, between the holders of mortuary certificates and of guaranteed option policies as follows:

Operating fund	$28,132.88
Premium fund	16,114.24
	$44,247.12

746 Insurance in force $220,209,500

Divided as follows:

1900.	Assessment.	Stipulated premium.
January	$17,466,000	$4,686,500
February	16,208,000	5,176,500
March	15,506,000	5,823,000
April	14,746,000	6,428,000
June	12,750,000	7,483,000
July	12,216,000	7,834,000
August	11,438,000	7,855,500
Sept.	11,098,000	8,058,000
Oct.	10,154,000	8,481,000
Nov.	9,510,000	9,056,000
Dec	8,920,000	9,316,000
	$140,012,000	$80,197,500

As shown in the foregoing statement, expenses aggregating $44,247.12 were pro rated upon the basis of insurance in force as follows:

Operating fund $\frac{140012000}{220209500}$ of $44,247.12	$28,132.88
Premium fund $\frac{80197500}{220209500}$ of $44, 247.12	16,114.24

747 Sub-divided as follows:

Amounts and items charged.		Operating fund. $\frac{140012000}{220209500}$	Premium fund. $\frac{80197500}{220209500}$
$1,440.00	Rent home office	$915.57	$524.43
3,161.31	Taxes	2,010.00	1,151.31
4,027.57	Advertising	2,560.77	1,466.80
1,905.62	Collection	1,211.61	694.01
2,173.05	Stamps	1,381.65	791.40
3,136.03	Incidentals	1,993.93	1,142.10
5,804.58	Legal expenses	3,690.62	2,113.96
8,427.36	Employés	5,358.23	3,069.13
9,916.60	Salaries officers	6,305.11	3,611.49
4,255.00	Trustees	2,705.39	1,549.61
$44,247.12		$28,132.88	$16,114.24

748 Q. Will you give a similar statement of the expenses of the year 1901?

A. I can best do so by giving you a transcript from the journal of the company, which is made out in detail, and is explanatory, and the same was made under my direction and supervision.

Witness then produces a paper as his answer to the above question, which is as follows:

The Minnesota Mutual Life Insurance Co.

Expenses Year 1901.

Total expenses		$136,349.47
Charged to premium fund:		
Commissions	$64.070.60	
Salaries of field m'g'rs & expenses agents	13,630.42	
Medical exam. fees	64.00	
Inspection of risks	4.00	
Ins. dept. fees & agents' licenses	2,177.11	
Rent, agency offices	632.10	
Advertising	1,159.30	
Printing & stationery	3,776.78	
Furn. & fixtures	1.00	
Incidentals	6,207.41	
	$91,721.72	
749 Charged to operating fund:		
Salaries field m'g'rs & exp. ag'ts	$27.52	
Incidentals	763.43	
	$790.95	
		$92,512.67
Operating fund was originally charged with all remaining expenses aggregating		$43,836.80

This $43,836.80 was divided *pro rata* December 31st, 1901, between the holders of mortuary assessment certificates and guaranteed option policies as follows:

Premium fund	$30,203.58
Operating fund	13,633.22
	$43,836.80

750 Insurance in force..... $188,301,487

Divided as follows:

1901.	Assessment.	Legal reserve.
Jan'y.....	$7,898,000	$9,423,000
Feb'y.....	7,396,000	9,771,000
March.....	6,848,000	10,165,000
April.....	6,276,000	10,611,000
May.....	4,834,000	10,884,500
June.....	4,626.000	10,965,500
July.....	4,376,000	11,125,500
Aug.....	3,898,000	11,149,000
Sept.....	3,746,000	11,207,600
Oct.....	2,961,000	11,568 379
Nov.....	2,867,000	11,528,379
Dec.....	2,835,000	11,341,629
	$58,561,000	$129,740,487

As shown in the foregoing statement expenses aggregating $43,836.80 were pro-rated upon the basis of insurance in force as follows:

Assessment.....	$58,561,000 = 31.1%
Legal reserve.....	129,741,000 = 68.9%

751

Amounts and items charged.		Operating fund. 31.1%.	Premium fund 38.9%.
$322.55	Furn. & fixt.....	$100.31	$222.24
17,661.62	Sal. officers.....	5,492.76	12,168.86
12,048.90	" employés.....	3,747.21	8,301.69
1,003.64	Taxes.....	312.13	691.51
1,195.54	Other expenses*.....	371.81	823.73
6,655.04	Legal expenses.....	2,069.71	4,585.33
1,594.00	Rentals home off.....	495.73	1,098.27
1,476.51	Coll. & exchange.....	459.19	1,017.32
1,879.00	Postage.....	584.37	1,294.63
$43,836.80	.....	$13,633.22	430,203.58

*Detail of other expenses, pro-rated, bonds employés $210.00, furn. repairs $55.43, telephone $159.50, cham. commerce dues $20.00, miscell. $750.61, total $1,195.54.

752 Cross-examination by Mr. BYERS:

Q. During the year 1899 the Bankers Life Association of Minnesota had practically abandoned the solicitation of insurance under the mortuary assessment certificate plan, had it not?

A. What year was that?

Q. During the year 1899.

A. During the year 1899, the first three or four months, there was mortuary assessment certificate business written to some extent, how much I can't say; but after that it was not solicited.

Q. During the larger part of the year then the clerical force of the company was largely engaged in preparing the new policies and sending out the literature incident to the new forms of policy, and applications for losses and so forth on the guaranteed option policies, was it not?

A. No, sir.

Q. Who was doing that?

A. That was done by the officers and by the actuary.

Q. I don't notice any charge here for actuary's services.

A. The items themselves may not be specially put down under that head, but they are there.

Q. In what items would actuary's services or expenses be included?

A. I don't know that I can tell you here, but I will see if I can. I don't see any item there, but the item is included in here. I should say it was in the incidentals.

Q. After the month of March at least 1900, all the literature that was sent out, except such as related to the collection of assessments and the annual dues, was sent out by the company in rela-
753 tion to guaranteed option policies, and not in connection with any mortuary assessment policies.

A. There is not any question there.

Q. Was it not?

A. No, sir.

Q. Was any literature then sent out with relation to mortuary assessment policies, other than what was necessary to prepare in the collection of assessments and annual dues?

A. Perhaps I don't understand what you mean by literature.

Q. There was no solicitation, there was no literature or other printed matter sent out with reference to the business on the mortuary assessment plan, or any solicitation on the mortuary assessment plan?

A. No, sir, nothing solicited, no new business on the mortuary assessment plan; that is true.

Q. So that all the business of the company was conducting the work of changing over as far as possible all the members of the association from the mortuary assessment plan to the guaranteed option policy plan?

A. That was part of the work, yes, sir.

Q. Was there any other work done by the company, except merely collecting the disbursement fund of the mortuary assessment certificates, except as far as it was rendered necessary by collecting the assessments due?

A. We found a large amount of the office force, a large part of their time was consumed in making out statements for investigating committees and answering——

754 Q. Answering questions?

A. The answering of questions coming chiefly from the mortuary assessment certificate members, and in preparing data and information for lawsuits and criminal prosecutions and attacks upon the company that were made by certain men, this man Carter and his co-conspirators.

Q. That was all covered by legal expenses.

A. No, sir, the entire office force in the last two years, I have figured, consumed over half of their time. Half the time of the whole office force has been devoted to making out statements and furnishing information entirely due to these assaults that have been made upon the company.

Q. During this year 1900 the only business done on the mortuary assessment plan was taking care of, or rather was attending to the business that was incidental to the attempted change from one form of policy to the other?

A. No, sir.

Q. Were not most of these questions and answers, and this general confusion which you have spoken about in the whole office, incidental to this change from one policy to the other?

A. It was incidental to the attacks that were made upon the company by attorneys and newspapers that I have spoken of. I want you to understand that it cost this company at least $2500 for the data that was furnished to two investigating committees that were sent down from Minneapolis. One of these was the Jacob Stone committee. We paid $1000 I think for that one investigation alone, leaving out the time of all the office force of the company

755 that was taken to make up those reports. They were investigating, as I recollect, for a month or more. There was another one sent down from there with the object and purpose of showing that the company was rotten, and would be in the hands of a receiver inside of six months.

Q. This is hardly an answer to my question. Was not most of that trouble you speak of caused by the fact that you had undertaken to change from one plan to the other?

A. No, sir. It was entirely due to a desire on the part of some people to wreck this company for their own pecuniary gain.

Q. Was it not a fact that as far as any regular insurance business is concerned, all the insurance business, practically all the regular insurance business of the company, except to collect assessments and disbursements on account of death losses on mortuary assess-

ment members was done for and on account of the guaranteed option policy plan, or guaranteed option policy members?

A. No, sir.

Q. Let me ask you what was done for the benefit of the mortuary assessment members, except to collect their assessments and disburse the amount of the death losses.

A. I can only state that in a general way. I will say that the efforts of the officers and the office force and of the attorneys and of the actuaries were devoted very largely during all that time to the protection of the interests of these mortuary assessment members, and in keeping the books and the records for that class. During the year 1900, it was done more for the mortuary assessment
756 members than it was for the others. I cannot enumerate all of them, but thousands of questions were asked.

Q. Isn't it a fact it was done because it was for their benefit to change from the old mortuary assessment certificate plan to the other plans.

A. No, sir. That is not the fact. It appears from the books that were kept that these books were far more complicated for the mortuary assessment certificate plan than they are for the stipulated premium plan.

Q. But that was not any more true of that year than it had been in preceding years, was it?

A. No, sir, that is true.

Q. It would appear then that the expense of handling that mortuary assessment insurance of this company during the year 1900 was not quite $61,000, from this statement.

Mr. MITCHELL: All these questions are with reference to the year 1900, and you have been looking at the paper with reference to the year 1899.

Mr. BYERS: I intended to ask the questions with reference to the year 1899.

Q. During the year 1899 I will ask you whether nearly all of the work of the company was not directed towards obtaining changes of members from the mortuary assessment plan to the guaranteed option plan.

A. No, sir.

Q. What was done that year, except to collect and disburse moneys due or owing to the mortuary assessment certificate members?

A. Substantially the same condition existing in 1899 that there was in the year 1900, except there was a larger amount of mortuary assessment insurance in 1899 than there was in 1900.

757 Q. No effort was made to solicit any new business?

A. I have told you a hundred times I think, I know I have said it a good many times, that there was not.

Q. Then in the year 1899 it appears from this statement that the total charge to the mortuary assessment plan aggregated a trifle over $60,000?

A. The statement will show for itself.

Q. It does not show it all in one place?

A. No, it is a matter of adding up or figuring.

Q. Then as I understand it is was a trifle over $60,000, isn't that right?

A. The statement will show for itself. I have not added it.

Q. In the year 1901 what was done for the benefit of the mortuary assessment certificate class other than to receive and disburse the funds?

A. A good deal was done for them.

Q. I will ask you what was done for them?

A. One of the very important things that was done was that when this suit was instituted, and that libelous circular was sent out it caused a great deal of fear and apprehension on the part of the mortuary assessment members; and if it had not been for the examinations that were made and persistent and continuous efforts on the part of the officers and the office force, the fact of this fear and apprehension alone would have caused a great deal heavier amount of lapses, and many more widows and orphans would have been deprived of their insurance.

758 Q. Were there a great many answers to questions with reference to that, many inquiries with reference to it?

A. Yes, sir, there were. If you want the list not I can give it you, and I can show you where they came from.

Q. Do you know about how many there were?

A. Well, I should say from a hundred and fifty to two hundred within the first ten days or two weeks.

Q. They were from mortuary assessment members?

A. Yes, sir. And from time to time since that they have been coming in. I can say, however, that a letter from me soon quieted them and allayed their fears, with the exception of a few of them. It necessitated the preparation of considerable data, and it was done with a good deal of effort on my part.

Q. During all these three years you have followed the plan of taking out the expenses included in this table, that is salaries, office employés, taxes, and so forth, and practically rated them between the two classes of insurance, as you denominate them, according to the amount of insurance that was represented to be in force in that way?

A. As I have heretofore stated in my testimony.

The further taking of testimony in this case is now adjourned until such time as may be agreed upon between the respective counsel.

759 Pursuant to adjournment the parties met, on the 31st day of May, 1902, by their respective solicitors, at the office of Messrs. How, Taylor and Mitchell, the attorneys for the defendants and in the presence of the special examiner, H. Harcourt Horn, Esq., the further taking of testimony is proceeded with as follows:

DOUGLAS PUTNAM, recalled on the part of the defendant-, testifies as follows.

Examined by Mr. MITCHELL:

Q. You testified on your direct examination before, as a witness for complainant, in connection with some notices of the annual meeting of August 5, 1902, that were sent to all the members; do you recollect on what date those notices were sent out?
A. As I recall it, it was July the 4th.
Q. The 4th of July, a legal holiday?
A. I don't remember what date it was sent out.
Q. I thought you had a memorandum of it.
A. No, I have not.
Q. Your office was not open on the 4th of July, was it?
A. No.
Q. Have you the original application for insurance which Mr. Samuel Wright, one of the plaintiffs in this case, executed and filed with the company at the time his insurance was taken out?
A. I have.

Witness produces a paper.

760 Mr. MITCHELL: I will offer this in evidence.

Mr. BYERS: It is admitted, subject to the objection that it is immaterial, incompetent and irrelevant, that in the application of Samuel Wright which has been referred to, the address of the said Samuel Wright was given by him as 600 Grand Ave., Milwaukee, Wisconsin, and that the same was his address as it appeared on the books of the company.

Q. Did Mr. Wright request any change to be made in his address from the time he made this application, as long as he remained a member?
A. He did not.
Q. And this address, 600 Grand Ave., Milwaukee, was carried on the books of the company as the address of Mr. Samuel Wright at the time of the sending out of the notice of the mortuary assessments in December, 1899, was it?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. It was.

MINNIE M. DAVIS, a witness produced and sworn on the part of the defendants, testifies as follows:

Examination in chief by Mr. MITCHELL:

—. — is your name?
A. Minnie M. Davis.
—. — occupation?

A. Book-keeper and cashier for the Minnesota Mutual Life
761 Insurance Company.

Q. Were you in the employ of the Bankers Life Association of Minnesota during the year 1899?

A. Yes, sir.

Q. During the whole of the year?

A. Yes, sir.

Q. Did you take any part of the sending out of notices of the mortuary assessments for death losses on or about the first of December 1899?

A. I had charge of sending them out.

Q. Mr. Joseph W. Shannon, one of the employés of the company has testified that he deposited in the mail a notice that mortuary assessments addressed to Mr. Samuel Wright of Milwaukee, on or about December the 4th, 1899, did you see the address on that envelope?

Objected to by counsel for defendant- as immaterial, incompetent and irrelevant.

A. No.

Q. Did you take any part in the comparing of the addresses on these envelopes of all these notices that were sent out at that time, with the addresses of the different members that were given in the book?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. The addresses on the envelopes were called out to me by another clerk and compared with the book that I have here before me.

Q. Did you compare the address on the envelope, the address of Mr. Wright, with the address as given in the book in that was?

762 Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Did the address as written on this envelope, the address of Mr. Samuel Wright, correspond with the address as shown on the books at that time?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Did you take any part in placing in the envelope the notices of assessments, or in checking them off?

A. I checked off the notice to see if it was correct.

Q. Miss Davis, I show you Defendants' Exhibit 42, and ask you to state whether or not this is a copy of the notice that was sent to

Mr. Samuel Wright in December, 1899, in the manner that I have referred to.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. Yes, that is a copy of the notice sent to Mr. Wright.

EMORY M. MORTENSEN, a witness produced and sworn on the part of the defendant-, testifies as follows:

Examination in chief by Mr. MITCHELL:

763 Q. What is your occupation?

A. Clerk in the Minnesota Mutual Life Insurance Company.

Q. How long have you been in the employ of the Minnesota Mutual Life Insurance Company, or as it was formerly the Bankers Life Association?

A. Six and a half years.

Q. Did you take any part in the mailing of the notices of the annual meeting of August the fifth, 1901?

A. Yes, sir.

Q. What part did you take?

A. I helped to prepare these notices.

Q. Did you have anything to do with depositing them in the mail?

A. Depositing them in the postoffice.

Q. Yes.

A. Yes, sir, I did.

Q. What.

A. I took them there myself with an expressman from Ballads.

Q. And you deposited them in the mail?

A. Yes, sir.

Q. On what date was this done?

A. July the 5th.

Q. What year?

A. 1901.

Q. That was the notice of the annual meeting of the members of the defendant company for August the 5th, 1901?

Objected to by counsel for defendant- as immaterial, incompetent and irrelevant, and for the reason that the notice shows for itself.

A. Yes, sir.

764 DOUGLAS PUTNAM, recalled on the part of the defendant-testifies as follows:

Examined by Mr. MITCHELL:

Q. What was the custom or practice of the office as to the sending out notices of annual dues to members of the company in the year 1901?

Mr. BYERS: What is this on? On what branch of the case is this on?

Mr. MITCHELL: Mr. Trubey's notice.

A. The custom was during the month of August.

Mr. BYERS: Wait a moment. I want to object to this as immaterial, incompetent and irrelevant; it seems to me that the question of notice has all been covered by the fact that the dues were paid; and there is testimony to that effect.

WITNESS: The custom was during the month of August to have notices printed, and then to have them properly filled out by clerks and these notices were then placed in envelopes properly addressed to the several respective members of the company; the envelopes were sealed, postage prepaid, and were deposited in the post office.

765 EMORY M. MORTENSEN, recalled on the part of the defendant-, testifies as follows:

Examined by Mr. MITCHELL:

Q. Did you take any part in the mailing of the notices of the annual dues for the year 1901?

A. Yes, sir.

Q. That is to say, notices that were sent out during the year 1901?

A. Yes, sir.

Q. Did you at that time make any memorandum—or state the part that you took in mailing these notices.

A. Yes, sir; this affidavit in the book on the back of the tickler.

Q. What is that you have before you?

A. It is the tickler.

Q. What is this tickler?

A. It is a list of all the members arranged alphabetically under separate towns. It was my custom as the assessment was made for the annual dues, to go over them, and check each envelope with the man's name that was entered in this book, and check it in red ink, and also check the envelopes for the respective banks with the receipts for collection, and then make an affidavit in the back of the book stating that I had mailed each envelope that is checked in red

ink, and taken them to the postoffice and saw that they were deposited in the postoffice.

Q. Did you take any part in depositing in the mails the notices of annual dues that were mailed during the year 1901?

A. Yes, sir.

Q. On what date was this done?

766 Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.

A. Saturday August 31st, at twelve o'clock noon.

Q. Did you at that time deposit in the postoffice *in* an envelope, postage duly prepaid, addressed to E. B. Trubey containing notice of the annual dues, addressed E. B. Trubey, Chicago, Illinois?

Objected to by counsel for complainant as immaterial, incompetent and irrelevant.

Q. You say you are using this tickler to refresh your memory?

A. Yes, sir.

Q. How do you know that there was one of these notices addressed to Mr. E. B. Trubey, Chicago, Illinois?

Mr. BYERS: Objected to as immaterial, incompetent and irrelevant.

A. Because it bears a red ink check mark.

Q. What bears the red ink check mark?

Mr. BYERS: Objected to as immaterial, incompetent and irrelevant.

A. In this tickler.

Q. Was the red ink check mark placed there by you?

A. Yes, sir.

Q. What does that red ink mark indicate?

A. The red ink mark indicates that I have seen the envelope addressed to E. B. Trubey, and had placed it in a sack, and it was taken to the postoffice.

767 Mr. BYERS: It will be understood that the same objection is made to all this testimony, as being immaterial and irrelevant.

A certain paper is here marked Exhibit 45, and is shown to counsel for complainants.

Mr. BYERS: Subject to the objection that it is immaterial and irrelevant, I will admit that Mr. Trubey's address was 1516 Masonic temple, Chicago, Illinois, and that such address was so carried on the books of the defendant company up to October 23rd, 1901.

Mr. MITCHELL: And that this address so carried on the books of the company was the address to which Mr. Trubey authorized the company to send notices of annual dues?

Mr. BYERS: Yes.

MINNIE M. DAVIS, recalled on the part of the defendant-, testifies as follows:

Examined by Mr. MITCHELL:

Q. Did you take any part in the sending out of notices for annual dues for the year commencing September 2, 1901, which were sent out as has been testified to?

A. I did.

Q. Along about the 31st of August, 1901?

A. I did.

Q. Did the company have a printed blank form of notice
768 for use at that time?

A. Yes, sir.

Q. I call your attention to this paper which has been marked Defendant's Exhibit 45 and ask you to state whether or not that is the printed form of notice that was used at that time; that is to say, in sending out notices of annual dues at or about the first of September, 1901.

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. Yes, it is.

Mr. MITCHELL: Mr. Byers, I will ask you to produce in response to the notice to produce the notice of the annual dues which was sent to Mr. E. B. Trubey at this time.

Mr. BYERS: Mr. Trubey says he never received any notice of annual dues; and we have not got it.

Q. Mr. Mortensen has testified that he deposited in the postoffice August 31st, I think it was, 1901, a notice of annual dues enclosed in an envelope and mailed and addressed to Mr. E. B. Trubey, Chicago, Illinois; did you take any part in checking over the addresses on the envelopes containing these notices with the addresses of the members as given on the books?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. Yes, sir. I checked over every notice. That is, I checked them over.

Q. It has been admitted for the sake of brevity, that Mr.
769 Trubey's address on the books of the company at this time was 1516 Masonic temple, Chicago, Illinois: state whether or not the address on this envelope containing this notice of annual dues which Mr. Mortensen sent out on or about September first, 1901, was the same address, that is to say, 1516 Masonic temple, Chicago, Illinois, as that appearing on the books of the company as Mr. Trubey's address.

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. Yes.

Q. Did you take any part in checking over the notices that were enclosed in these envelopes?

A. Yes sir.

Q. I call your attention to a paper marked Defendant's Exhibit 45, and ask you to state whether or not that is a copy of the notice which was contained in the envelope addressed to Mr. Esdras B. Trubey, 1516 Masonic temple, Chicago, Illinois, which Mr. Mortensen deposited in the postoffice as he has testified.

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. I don't know whether it was addressed Esdras B. Trubey or E. D. Trubey, but the address was on there.

Q. It was either E. B. Trubey or Esdras B. Trubey?

A. Yes sir.

Q. Is this exhibit a copy of the notice?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

770 A. Yes. This is a copy of that notice. (Referring to Defendant's Exhibit 45.)

Counsel for defendants now offers in evidence Defendant's Exhibit 45.

Mr. BYERS: I object to this exhibit as immaterial, incompetent and irrelevant.

771 T. R. PALMER, recalled on the part of the defendant-, testifies as follows.

Examined by Mr. MITCHELL:

Q. You testified to having had some conversation with the plaintiff E. B. Trubey in your office on October 10th, 1901; did any further conversation take place other than that to which you have already testified?

A. Perhaps in my testimony the other day I didn't go into all the details of the conversation. I would say I suggested to Mr. Trubey that he re-instate his policy and take one of the new forms of policy. I explained to him on what basis it could be done, the same as has been testified to here, as it was done with all the members, that he would get a certain credit in reduction of his premiums. I gave him the premium rate and told him it would reduce the level premium rate, and I gave him at that time a statement together with a circular letter which I had prepared and printed and called his attention to that part of it. It is the blue one, the one that is printed on blue paper, and I also gave him the one that is printed on yellow paper. He stated to me at that time after I had fully ex-

plained all this to him, and the fact of our re-incorporation as a legal reserve company, he said it was all right and he thought that it was the best thing for the company to do, and that he should in all probability take advantage of it later on and make his
772 exchange, but he preferred at that time to re-instate the policy in the ordinary way.

Q. Did this conversation take place before it was reinstated or afterwards?

A. It was when it was reinstated. The last thing that was done, he paid his money and got his receipt. He didn't stay there thirty seconds after that. He got his receipt and went out.

Q. You were present at the taking of the testimony of W. A. Rennick, Charles Miller, Theron R. Woodward and Ed Maher before Marshall Sansell the commissioner, in the city of Chicago?

A. Yes, sir.

Q. Do you recollect that at the time these witnesses gave their testimony, they produced certain communications, or were shown certain communications, which they stated were the same or were copies or exactly identical with certain communications that they had received through the mails?

A. Yes, sir.

Q. Do you recollect that?

A. Yes, sir. There was a circular letter purporting to be signed, in typewriting by Iverson and by Wright, and a printed slip in the form of a power of attorney, an unsigned printed slip in the form of a power of attorney.

Q. There were certain of these circulars and powers of attorney which were then exhibited to these witnesses I have named and these circulars and papers were marked at that time. Those shown to Mr. Rennick were marked Exhibits 1 and 2; those shown to Mr. Charles Miller were marked Defendant's Exhibits 3, 4 and 5,
773 and those shown to Theron R. Woodward were marked Defendant's Exhibits 6 and 7, and those shown to Mr. Ed Maher were marked Defendant's Exhibits 13, 14 and 15. Each of these witnesses as I recollect it, testified that he had received certain papers exactly similar to these exhibits which I have just enumerated, and had forwarded them through the mails to this defendant company. I will ask you whether or not you received, as president of the defendant company, through the mails these exhibits which were shown to these witnesses and referred to by them in the manner that I have stated.

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

A. I did.

Q. What became of these papers from the time you received them through the mails until they were produced and shown to the witnesses in Chicago?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. These papers, in some instances with the envelopes which enclosed them when received, were usually accompanied by some inquiry about the matter, or some notation or something. After I had read the matter these papers and these circulars, with the envelopes in some instances, were placed in a Globe letter file which I have, and they remained there until they were taken to Chicago at that time.

774 Q. Were these circulars and powers of attorney with the envelopes in some instances as you say, that were received from these witnesses attached to the communication that you wrote back to these persons who had sent them, so you could identify the particular circular which had been received from each particular member.

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. Yes sir, it was attached to a carbon copy of the letter I wrote.

Q. Were these papers marked Exhibits 1 and 2 which were shown to Mr. Rennick, the identical papers which were received by you through the mails from Mr. Rennick?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. They were.

Q. Were the envelopes and circulars marked Exhibits 3, 4 and 5 which were shown to Mr. Charles Miller, and with regard to which he testified, the identical papers that were received from Mr. Miller through the mails by you as you have stated?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. They were.

Q. Were the papers which were marked Defendant's Exhibits 6 and 7, and which were shown to Mr. Theron R. Woodward, in regard to which he testified, the identical papers which you received through the mail from Mr. Woodward?

775 Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. They were.

Q. Were the papers marked Exhibits 13, 14 and 15 which were the papers shown to the witness, Ed Maher, and in regard to which he testified, the identical papers received by you through the mails from Mr. Maher?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. They were.

Q. Now Mr. Palmer, I will ask you another question. Has any portion of the guaranty trust fund of this company, and I mean by the guaranty trust fund the two portions that are carried on the books as the guaranty trust fund proper and the mortuary reserve fund, ever been used or applied by the company for any purpose other than to the payment of the death losses arising from the deaths of persons holding mortuary assessment certificates?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as calling for a legal conclusion on the part of the witness.

A. No, sir. With the exception, that when deaths occurred under some few of the first certificates that were issued in the first year or two of the company's existance, the deposit of the member in that fund was returned; that was pursuant to the contract which was made at that time; but with that exception, it has never been used for any purpose other than to pay death losses arising on
776 mortuary assessment certificates.

Q. I will ask you to state whether or not any portion of the guaranty trust fund has been used during the years 1899, 1900, 1901 and 1902 in the payment of death losses, and if so how much?

Mr. BYERS: I object to it as immaterial.

A. My recollection is——

Mr. BYERS: You say 1902?

Mr. MITCHELL: Up to the present time.

WITNESS: My recollection is that there was nothing actually paid out of the guaranty trust fund in 1899.

Q. I will call your attention to the fact that Mr. Putnam on his direct examination by Mr. Byers as a witness for complainants, Mr. Putnam stated the amount that had been transferred from year to year from the guaranty trust fund to the mortuary fund, but that those figures did not extend beyond the year 1898. I want to know whether or not since that time moneys have been used out of this fund for the payment of death losses?

A. Yes; certainly in 1901 and 1902; and it is my impression that, that I am not sure——

Q. Well, if you don't know accurately I will call Mr. Putnam upon that. I thought you had these figures as to the exact amount.

A. I have the figures here for 1901 and 1902.

Mr. BYERS: Those are from the books?

WITNESS: Yes. There is $8,000 in 1901 and $8,000 so far in 1902, but I am not positive. There was a resolution passed
777 at the time of the first increase in the assessment was made, I think it was in December, 1900. In December 1900 there was a resolution passed by the board of trustees directing the pay-

ment of certain mortuary assessment death claims out of the guaranty trust fund; but my recollection is there was no payment made in December, but pursuant to that resolution there were payments made early in 1901.

DOUGLAS PUTNAM, recalled on the part of defendant-, testifies as follows:

Examined by Mr. MITCHELL:

Mr. BYERS: I don't think there was anything drawn out of the guaranty trust fund in 1899.

Mr. MITCHELL: I will ask Mr. Putnam about this matter more definitely.

Q. Can you state Mr. Putnam whether during the years 1899, 1900, 1901 or 1902, any portion of the guaranty trust fund, which term includes the mortuary reserve fund, had been used or applied to the payment of death losses arising out of deaths of persons holding mortuary assessment certificates, and if so how much.

Objected to by counsel for complainants as immaterial.

A. Yes, death losses have been so paid out of the guaranty
778 trust fund during the year 1901, to the amount of $8000. There was paid on death losses of holders of mortuary assessment certificates out of the guaranty trust fund on May 23rd, 1902, $8000 more, making the total amount paid in 1901 and on the 23rd of May, 1902, and up to that time a total of $16,000.

Q. Was there anything paid out in the years 1900 and 1899 in this way?

A. No.

T. R. PALMER, recalled on the part of the defendant-, testifies as follows:

Q. I will ask you to state, Mr. Palmer, from the books of the company the admitted assets and liabilities of the defendant company on July 31, 1901.

A. The total assets of the company July 31, 1901, as admitted and allowed by the insurance department of the State of Minnesota, were as follows:

Mr. BYERS: I move to strike out the words "as admitted and allowed by the insurance department of the State of Minnesota," as not responsive to the question, and also as being a legal conclusion on the part of the witness.

Q. What do you mean by, admitted?

A. I mean the actual assets, or as I have stated, that these assets

were examined and checked by the insurance department of
779 the State of Minnesota, and admitted and allowed by the insurance commissioner to be the correct amount.

Mr. BYERS: I move to strike out the answer of the witness as immaterial, incompetent and irrelevant.

WITNESS: The total assets of the company July 31, 1901, were as follows:

IV.—*Ledger Assets.*

As per ledger accounts shown by the books at home office at close of business July 31.

1. (a) Book value real estate (Schedule A), unincumbered, $—; incumbered, $—		
2. Mortgage loans on real estate (Schedule B), first liens, $42,700; other than first, $—		$42,700.00
3. Loans secured by pledge of bonds, stocks, or other collateral, per Schedule C		
4. Loans made to policy-holders on this company's policies assigned as collateral		1,175.94
5. Premium notes on policies in force		12,030.09
6. (a) Book value bonds, excluding interest, $891,342.29; stocks $8,500.00 (Schedule D)		899,842.29
7. Cash in company's office, $9.40; deposited in bank, $36,301.40		36,310.80
(Name the banks and amounts:)		
Merchants nat'l bank	$24,270.49	
Nat'l German Amer. bank	11,895.41	
780		
First nat'l bank	$135.50	
8. Bills receivable, $—;		
Agents' debit balances, $238.66		238.66
Lien-notes on policies		597,564.24
Total		$1,589,862.02

Deduct Ledger Liabilities.

9. Agents' credit balances, $167.18; borrowed money, $ none; all other, $201.77	368.95
Total net ledger assets, as per balance above	$1,589,493.07

Non-ledger Assets.

10. Interest due, $— and accrued, $354.96 on mortgages	354.96
11. Interest, due, $— and accrued, $4,635 75 on bonds and stocks	4,635.75
12. Interest, due, $— and accrued, $— on collateral loans	
13. Interest due, $— and accrued, $13,985.48 on premium notes, loans or liens	13,985.48
14. Interest due, $— and accrued, $— on other assets	
15. Rents due, $— and accrued, $— on company's property or lease	
	$18,976.19
16. Market value of real estate over book value, as per Schedule A	
17. Market value (not including interest, in item 11) of bonds and stocks over book value, as per Schedule D	

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	New business.	Renewals.
18. Gross premiums, not more than three months due after period of grace, unreported on policies outstanding July 31	$2,760.59	$5,033.30
19. Gross deferred premiums on policies outstanding July 31	11,095.25	73,773.21
20. Totals	$13,855.84	$78,806.51
21. Deduct cost of collection 47-4/10 per cent. on "new," 1 per cent. on "renewals"	6,566.92	788.07
	$7,288.92	$78,018.44
22. Net amount of uncollected and deferred premiums		85,307.36
23. Other items		
Gross assets		$1,693,776.62

Deduct Assets Not Admitted.

1. Company's stock—owned, $—; loans on $—	
2. Supplies, printed matter, stationery, furniture, fixtures, safes, etc	
3. Commuted commissions, $—; agents' debit balances not secured by bonds, $238.66	$238.66
4. Loans on personal security, incorsed or not, $—; bills receivable, unsecured, $—	

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5. Premium notes or loans and net premiums in item 22 in excess of reserve on policies	
6. Commissions payable to agents on premium notes when paid	5,078.01
7. Depreciation in ledger assets to bring same to market value; real estate, $—; bonds and stocks, $—; other $—	
Total	$5,316.67
Total admitted assets	$1,688,459.95

Q. Now I will ask you also as to the liabilities of the company.

A. The non-ledger liabilities of the company for the period ending July 31, 1901 were $1,101,622.89.

Q. That left a surplus of how much?

Mr. BYERS: I object to this as immaterial, incompetent and irrelevant, and as calling for a legal conclusion on the part of the witness.

A. That left a surplus of $586,837.06.

Q. Will you give an itemized statement of the liabilities of the defendant company for the period ending July 31, 1901, as your answer to this question?

A. I will hand in this page on the book I referred to:

783 V.—*Non-ledger Liabilities.*

As shown by the books at home office at close of business July 31.

1. Net present value of all the outstanding policies in force on the 1st day of July, 1901, as computed by the insurance department of Minnesota according to the actuaries' table of mortality, with four per cent. interest	$1,069,024.89
Same for reversionary additions	
Same for annuities (including those in reduction of premiums)	
Total	
Deduct net value of risks of this company reinsured in other solvent companies	
Net reserve	$1,069,024.89
2. Present value of amounts not yet due on matured installment policies (face $—)	
3. Matured endowments due and unpaid	None.
4. Death losses due and unpaid	None
5. Death losses in process of adjustment or adjusted and not due	None
6. Death losses which have been reported and no proofs received.	(2) $8,000
7. Death losses and other policy claims resisted by the company, not yet outlawed	6,000

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8. Due and unpaid on annuity claims, $—; on installment policies, $—	
Gross policy claims	$14,000.
Deduct due from solvent companies for reinsurance	
Net policy claims	$14,000.00
9. Unpaid dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums	
10. Unpaid interest or dividends to stockholders	
11. Salaries, rents, expenses, taxes, bills, accounts, bonuses, commissions, medical and legal fees, etc., due or accrued	
12. Premiums paid in advance	
13. Surrender values claimable on policies canceled whose reserves are not included in item 1	
14. Any other liability, viz.: guaranty trust fund returnable at death, $18,598.00	18,598.00

785 Q. You have stated in answer to my question as to the liabilities that the net present value of all the outstanding policies in force on the first day of July 1901, as computed by the insurance department of Minnesota, according to the actuaries' table of mortality with 4% interest, was $1,069,024.89, and that that is one of the liabilities of the company, or was at that time; I will ask you to explain what that liability consisted of and how it was arrived at?

A. That liability is arrived at under the requirements of chapter 195 of the General Laws of Minnesota for the Year 1895, as amended by chapter 143 of the General Laws of Minnesota for the Year 1901,

and the computations are made upon the tables of mortality and the expectancy of life of each policy holder so taken into consideration for the computation; and the amount of reserve which is necessary to mature that policy if it was a life policy, or if it is an endowment policy, is established by these computations, assuming that the policy will continue in force from that time on until the maturity of the contract. In other words, the statute requires the company to accumulate from year to year an amount which at the time of the maturity of the contract will be sufficient to meet it.

Q. This liability then is what is called the legal reserve required to be held by the company as against all its policies?

A. Yes, sir. In reality it is a security for the payment of death losses to mature in the future.

786 Q. What is that reserve liability as is computed as you have stated? Did it include all forms of insurance that were in force or issued by the defendant company at that time?

A. Yes, sir, it included every mortuary assessment certificate as well as the guaranteed option policies. The statute provides for that.

Q. This net reserve liability then includes the liabilities, or the legal reserve that the company is required to keep under the law, as against its mortuary assessment certificates?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant, and as calling for a legal conclusion of the witness.

A. Yes, sir, computed on the same basis as the other.

Q. Will you state from the books of the company or give a statement of the total assets and liabilities of the company at the close of business on December 31, 1901.

A. The total actual assets of the company at the close of business on the 31 day of December, 1901, and the assets as they were admitted and allowed by the insurance department of the State of Minnesota after examination and checking, were as follows:

Mr. BYERS: I move to strike out that part of the answer of the witness which refers to the assets of the company as they were admitted and allowed by the insurance department of the State of Minnesota after examination and checking, on the ground that the same is not responsive to the question, that it is immaterial,

787 incompetent and irrelevant, and also on the ground that it calls for a legal conclusion on the part of the witness.

The witness then produces the following statement from the books of the company:

IV.—*Ledger Assets.*

As per ledger accounts shown by the books at home office at close of business December 31.

1. (*a*) Book value real estate (Schedule A), unincumbered, $ none; incumbered, $ none		
2. Mortgage loans on real estate (Schedule B), first liens, $78,500.00; other than first, $ none		$78,500.00
3. Loans secured by pledge of bonds, stocks, or other collateral, per Schedule C, none		
4. Loans made to policy-holders on this company's policies assigned as collateral		1,210.94
5. Premium notes on policies in force, of which $2,227.16 is for first year's premiums		4,175.63
6. (*a*) Book value bonds, excluding interest, $918,446.04; stocks, $10,200.00 (Schedule D)		928,646.04
7. Cash in company's office, $3,594.92; deposited in bank, $30,331.99		33,926.91
(Name the banks and amounts:)		
Merchants nat'l bank, St. Paul	$19,358.25	
788		
National German American	10,838.24	
First national bank	135.50	
8. Bills receivable, $ none; agents' debit balances $716.41		716.41
Lien notes		644,382.27
Total		$1,691,558.20

Deduct Ledger Liabilities.

9. Agents' credit balances, $ none; borrowed money, $ none; all other, $55.00	55.00
Total net ledger assets, as per balance above	$1,691,503.20

Non-ledger Assets.

10. Interest due, $ none and accrued, $1,289.52 on mortgages		1,289.52
11. Interest due, $592.50 and accrued, $3,628.92 on bonds and stocks		4,221.42
12. Interest due, $ none and accrued, $ none on collateral loans	None	
13. Interest due, $ none and accrued, $14,996.57 on premium notes, loans or liens		14,996.57
14. Interest due, $ none and accrued, $ none on other assets	None	
15. Rents due, $ none and accrued, $ none on company's property or lease		
		$20,507.51
16. Market value of real estate over book value, as per Schedule A	None	
17. Market value (not including interest, in item 11) of bonds and stocks over book value, as per Schedule D		$12,718.56
		$12,718.56

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	New business.	Renewals.
18. Gross premiums, not more than three months due after period of grace, unreported on policies outstanding December 31	$1,218.19	$16,461.40
19. Gross deferred premiums on policies outstanding December 31	6,210.66	62,970.22
20. Totals	$7,428.85	$79,431.62
21. Deduct cost of collection 48–85/100 per cent. on "new," 1 per cent. on "renewals,"	3,629.18	794.31
	$3,799.67	$78,637.31
22. Net amount of uncollected and deferred premiums		82,436.98
23. Other items		
Gross assets		$1,807,166.25

Deduct Assets not Admitted.

1. Company's stock—owned, $ none; loans on $ none.		
2. Supplies, printed matter, stationery, furniture, fixtures, safes, etc	$2.00	
3. Commuted commissions, $ none; agents' debit balances not secured by bonds, $716.41	716.41	
4. Loans on personal security, indorsed or not, $ none; bill receivable, unsecured, $ none		
5. Premium notes or loans and net premiums in item 22 in excess of reserve on policies, none.		

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6. Commissions payable to agents on premium notes when paid	1,122.25	
7. Depreciation in ledger assets to bring same to market value: Real estate, $ none; bonds and stocks, $ none; other $ none		
Total		1,840.66
Total admitted assets		$1,805,325.59

A. The total non-ledger liabilities of the company, and the liabilities as they were ascertained and declared by the insurance department of the State of Minnesota, after an examination of the company's affairs, December 31, 1901, or at the close of business on December 31, 1901, were $1,192,632.38.

Mr. BYERS: I move to strike out all the answer of the witness after the words "the total liabilities of the company" as immaterial, incompetent and irrelevant, as not the best evidence, and as not responsive to the question.

Q. Will you give an itemized statement of the liabilities of the defendant company on December 31, 1901?

A. I give it here in this book.

791 V.—*Non-ledger Liabilities.*

As shown by the books at home office at close of business December 31.

1. Net present value of all the outstanding policies in force on the 31st day of December, 1901, as computed by insurance department of Minnesota according to the actuaries' table of mortality, with four per cent. interest	$1,147,567.00
Same for reversionary additions	None
Same for annuities (including those in reduction of premiums)	None
Total	$1,147,567.00
Deduct net value of risks of this company reinsured in other solvent companies, none	
Net reserve	$1,147,567.00
2. Present value of amounts not yet due on matured installment policies (face $—)	None
3. Matured endowments due and unpaid	None
4. Death losses due and unpaid	None
5. Death losses in process of adjustment or adjusted and not due	14,000
6. Death losses which have been reported and no proofs received	8,000
7. Death losses and other policy claims resisted by the company, not yet outlawed	6,000
8. Due and unpaid on annuity claims, $—; on installment policies, $—	
792 Gross policy claims	$28,000
Deduct due from solvent companies for reinsurance	
Net policy claims	$28,000.00
9. Unpaid dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums, none	
10. Unpaid interest or dividends to stockholders, none	
11. Salaries, rents, expenses, taxes, bills, accounts, bonuses, commissions, medical and legal fees, etc., due or accrued	$1,842.38
12. Premiums paid in advance, none	
13. Surrender values claimable on policies canceled whose reserves are not included in item 1, none	
14. Any other liability, viz.: guaranty trust fund returnable at death	$15,223.00

793 Q. Were these actual assets that you had given there what are called the admitted assets, that is to say the assets admitted by the insurance department of the State of Minnesota?

Mr. Byers: I object to this as immaterial, incompetent and irrelevant, and also as calling for a legal conclusion of the witness, and further because it is leading.

A. They were.

Q. State whether or not the assets which you have given here were in any way passed upon or approved by the insurance department of the State of Minnesota.

Mr. Byers: I object to this as immaterial, incompetent and irrelevant, and as not the best evidence.

A. They were, every dollar of it. Every dollar of the assets of the company was examined by the insurance department of the State of Minnesota, and checked and valued. After that was done they were admitted and allowed to such an extent as I have stated.

Q. You stated the assets are made up of the assets as admitted and allowed by the insurance department of the State of Minnesota?

A. Yes, sir. It shows in the answer which I have given, it shows those which were not allowed, those which were deducted from the assets of the company, the assets which a company ordinarily claims.

Q. Will you make a similar statement as to the liabilities of the company on December 31, 1901?

—. —.

794 Q. Were these assets and liabilities as you have stated them, in any way passed upon or approved by the insurance department of the State of Minnesota?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant, and as not the best evidence.

A. The reserve liabilities were computed by the insurance department of the State of Minnesota, and the other liabilities were declared by the insurance department of the State of Minnesota, after an examination of the company's affairs and its books and records.

Q. You have stated that among the liabilities, the net present value of all the outstanding policies in force on the 31st day of December, 1901, as computed by the insurance department of the State of Minnesota, according to the actuaries' table of mortality with 4% interest was $1,147,567.00. Will you explain generally what that liability is and how it is arrived at?

Objected to by counsel for complainants as immaterial, imcompetent and irrelevant, and not the best evidence.

Mr. MITCHELL: I will add to my question and ask you to state what is meant by this description of that liability.

The same objection on the part of counsel for complainants.

A. My anwer to that would be exactly the same as that answer which I gave with reference to the reserve liability at the close of business on July 31, 1901.

795 Q. Does that reserve liability of December 31, 1901 include the reserve liability computed according to the statutes of this State upon the mortuary assessment certificates?

A. It does.

Q. As well as the other guaranteed option policies?

A. It does.

Q. What was the surplus of the company on December 31, 1901?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as calling for a conclusion on the part of the witness.

A. The surplus assets of the company over and above all of its liabilities, on December 31, 1901, as admitted and declared by the insurance department of the State of Minnesota were $612,693.21.

Mr. BYERS: I move to strike out the answer of the witness as far as these words are concerned "as admitted and declared by the insurance department of the State of Minnesota," as immaterial, incompetent and irrelevant and as not responsive to the question.

Q. I will ask you to state the total assets of the defendant company, both its actual assets and the assets as admitted by the insurance department of this State on December 31, 1897, also on December 31, 1898, also on December 31, 1899, also on December 31, 1900, also on December 31, 1901,—you have given them for 1901.

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, as calling for a legal conclusion on the part
796 of the witness, and also as not being the best evidence *evidence.*

A. The actual assets of the company, being the assets which were admitted and allowed by the insurance department of the State of Minnesota at the close of business——

Mr. BYERS: I move to strike out that part of the answer for the reasons given before.

WITNESS: At the close of business on December 31, 1897, and for the years 1898, 1899 and 1900 were as follows:

1897	$884,003.83
1898	923,572.12
1899	957,202.12
1900	1,472,177.65

Q. State whether or not the company has continued up to the present time to levy assessments to pay death losses, and in any other ways to conduct the business of the mortuary assessment certificates in the same way as had been done a year before during the existence of the company.

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. Yes, sir, the business in relation to the mortuary assessment certificates has been carried out and is being carried out exactly the same as it always was.

Q. Was any limit ever placed upon the time in which persons holding mortuary assessment certificates could transfer to the new plan?

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.

A. No, sir.

Q. State whether or not any person now holding mortuary
797 assessment certificates can be permitted to transfer to the new plan if he so desires.

Counsel for complainants objects to the question as immaterial, incompetent and irrelevant.

A. Yes, sir, and occasionally one does transfer.

Mr. BYERS: I move to strike out the latter part of the *latter part of the* answer as not responsive to the question.

Q. Have members holding mortuary assessment certificates been permitted up to the present time to transfer to the new plan, whenever they so desired?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant, and as not the best evidence.

A. Yes, sir.

Q. Will you state approximately the amount of mortuary assessment certificates now in force?

A. Between two millions and two and a half millions I think. I might say it is between two millions two hundred thousand dollars and two millions three hundred thousand dollars.

Q. Is this company doing business in other States than Minnesota?

A. Yes, sir, many of them.

Q. I would ask you to state what States in the United States the defendant, The Minnesota Mutual Life Insurance Company is now doing business in, under licenses from the insurance departments of the respective States.

Objected to by counsel for complainants as immaterial, incompetent and irrelevant, and as not the best evidence.

Q. Do you know about the certificates in the other States?
798 A. The licenses?

Q. Yes, who obtains the licenses in the other States?

A. No, I don't believe I do.

Mr. MITCHELL: Will you waive your objection that it is not the best evidence?

Mr. BYERS: I will strike out the objection that it is not the best evidence. I object to the former question as immaterial, incompetent and irrelevant, but there is no objection on the ground that it is not the best evidence.

Q. Now give the names of the States.

A. Wisconsin, New York, South Dakota, Kentucky, Louisiana,

Missouri, North Dakota, Wyoming, Texas, Michigan, Nebraska, Washington, Montana, Iowa, Illinois, Pennsylvania, Kansas, Idaho, Maryland, Indiana, Colorado; and the company is about to receive a license from the District of Columbia.

Mr. Byers: I move to strike out the answer of the witness that the company is about to receive a license for the District of Columbia.

Witness: That is the only application that is pending.

Q. State whether or not in making your report of these various statements of assets and liabilities, the company is permitted to carry and list as an asset the amount of these lien notes with regard to which some testimony has been taken, whether or not these lien notes are accepted by the insurance departments of these various States as an asset of the company.

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

799 A. They are, by every one of them.

Q. Is this company engaged in writing new business in these States at the present time.

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. It has agencies in most of them. In some of them agencies have not been perfected yet, but they are being perfected as fast as we can perfect them.

Q. Did any delay occur after August 5, 1901, with regard to the preparation for the writing of new business, or were you unable to commence immediately after August 5, 1901?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. We were not able to commence to write new business for a long time after August 5, 1901, after we had re-incorporated.

Q. For what reason?

Mr. Byers: I object to this as immaterial, incompetent and irrelevant.

A. For the reason that all of the books and stationery of the company had to be changed; all the different forms of policy had to be prepared, and they are not all completed yet. The rates, premium rates and settlement rates had to be prepared by the actuary and perfected for all the different classes of policies. They are not all completed yet, but are being completed from time to time. So it was not until the first of January of this present year that the company was prepared in the manner I have mentioned to push

800 out for new business to any great extent. There was some business, I think a few thousand, I think in November and December. December is not much of a month for business, except

what the big companies give away at the close of the year. We have been writing new business and there has been an increase of business.

Mr. BYERS: I move to strike out the latter part of the answer of the witness as not responsive to the question.

Q. State what amount of new business the company has written and is writing since January 1st, 1902.

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. It has written I think approximately half a million dollars of new business, and this month it has written at the rate of two millions or more a year. The volume of business is increasing every month.

Q. Did the company hold an annual meeting this year?

A. Yes, sir.

Q. Of the members?

A. Yes, sir.

Q. On what date?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. I have forgotten the exact date. It was in March, 1902. (Witness refers to book.) The annual meeting was held on the 4th day of March, 1902.

Q. I will ask you whether at that meeting any members of the defendant company holding mortuary assessment certificates,
801 took any action or made any protest, or made any objection to carrying on the business of the company the defendant here in the way in which it had been carried on.

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as not being within the issues of the case.

A. No, sir. On the contrary, a number of them eulogized the officers, and spoke very favorably of the manner in which the business had been transacted, and expressed their feelings as to the security——

Mr. BYERS: I move to strike out the answer of the witness after the words "No, sir."

Q. State whether or not this company was examined by the insurance department of this State, recently, and if so when?

Objected to by counsel for complainants as immaterial, incompetent and irrelevant.

A. It was. A very searching examination was made by the insurance department in the fall of 1901, and that examination continued, as I recollect it, for a period of about six weeks. A report was made late in October, 1901.

Mr. BYERS: Was that after this action was begun?

Mr. PALMER: I declare I don't remember whether it was after or not. I am compelled to change my answer with reference to the date when Mr. Dearth's report was filed. I find upon reference to it that it was filed October 3, 1901. His examination commenced immediately after the re-incorporation.

802 A recess is here taken until two o'clock p. m., at which time T. R. Palmer is cross-examined by Mr. Byers as follows:

Q. In this circular letter of August 15, 1901, which is marked Defendants' Exhibit 44 it says, "The management has concluded for a limited time to give the few members remaining on the mortuary assessment plan the privilege of exchanging their assessment certificate for either of the new forms of policies." What was the meaning of the words "for a limited time" that are inserted there?

A. That was the meaning, just what is stated there, that they were to be given for a limited time the privilege of exchanging the assessment certificates for either of the new forms of policies, based upon the same premium rates as other members had been given in the past. The premium rate that had been charged to these transferring members was a lower premium rate than that charged by any level premium company, even for non-participating policies. It was a much lower rate than is being charged on the policies now being issued on new insurance today. The actuary told us it was doubtful if we could continue that rate to transferring members for a very long time. If they didn't come in when they were asked to, it might be that we would have to raise the rate. There was no idea of shutting them out at all. It was simply a question of how long we could continue to transfer them at those premiums. If you will take the trouble to look at the rates you will see that they are lower than those charged by any level premium company, even for a non-participating policy, and that was the idea at that

803 time. As I said before there was no idea of shutting them out. The rate was a lower rate than would now be charged for the same business, new business, and is a good deal lower than what is charged by level premium companies, as I said before even for non-participating policies. We are still allowing transferring members to come in at that old rate. Up to this time we have been able to see our way clear to do it.

Q. You say, Mr. Palmer, in regard to the liabilities of the company on December 31, 1901, and on July 31, 1901, that — the amount of the reserve therein stated there was included the reserve on the mortuary assessment policies. Will you give me the amount of the reserve on those policies?

A. I cannot do that. The insurance department does not certify them separately.

Q. The insurance department does not certify them separately.

A. No, sir, they certify them on all the policies. The policies are not classified in the certification.

Q. Do you recollect approximately the amount of the reserve on the mortuary assessment certificates?

A. Well, I knew at the time. I was told at the time, but I declare I don't like to testify to it. I have figures running through my mind about it, but they might not be correct.

Q. Of course I don't want to take advantage of any want of memory, but what I want to get at approximately is the amount of that reserve.

A. I have it running through my mind that on July 31
804 the amount on the mortuary assessment certificates on July 31, as computed by Mr. Dearth, was approximately $60,000.

Q. And on December 31?

A. Well, it was less than that. I should say somewhere between forty and fifty thousand dollars.

Q. You don't recollect the exact figures?

A. No.

Q. Reference has been made in the testimony here to the report of a committee appointed as the result of a resolution contained on page 224 of the Book of Minutes, which committee was appointed to investigate the affairs of the association at the time, and make a report. Do you recollect anything about the appointment of that committee?

Objected to by counsel for defendants as not proper cross-examination.

A. I recollect there was a committee appointed.

Q. Do you recollect anything about the report of that committee, or whether they did make a report?

Counsel for defendants objects to the question as not proper cross-examination.

A. I know it did make a report. That is, it made a report which it left at the office of the company, or which they left at the office of the company.

Q. Do you know whether that company employed accountants to investigate the affairs of the association.

Mr. MITCHELL: I object to this as not proper cross-examination.

A. I think they did. I think Mr. Jacob Stone, the chair-
805 man of the committee did, I believe he was the chairman.

Q. You understand they did employ some accountant from Chicago?

Objected to by counsel for defendants as not proper cross-examination.

A. Yes, I think Mr. Jacob Stone employed some accountant from Chicago. I have forgotten the name of the man.

Q. Was not a report of the work of the accountant communicated to you?

Objected to by counsel for defendants as not proper cross-examination.

A. I think not, except in the way of the report itself.
Q. You mean the report of the committee?

Objected to by counsel for defendants as not proper cross-examination.

A. Yes.
Q. They didn't show you the repert of the committee as the report of the accountant?

Objected to by counsel for defendants as not proper cross-examination.

A. It is possible they did, but I have no recollection of it.
Q. Were you president of the company at that time?

Objected to by counsel for defendants as not proper cross-examination.

A. Well, I would hardly say. I think I was, I think I had just been elected. I think that I was not president at the time the annual meeting was held. I think I had been elected, and I
806 think my office, or term of office had not commenced, and did not commence until the September following.
Q. But at the time this committee made its report you were president.

Objected to by counsel for defendants as not proper cross-examination.

A. I think I was. That is my impression.
Q. Was not then the whole work of this committee and the work of the accountants communicated to you at some time before the report of this committee was published.

Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and as not proper cross-examination.

A. As I have already stated this committee gave us its report in writing and Jacob Stone instructed us to have it printed. We engaged the printer, and Jacob Stone read the proof. He did the whole business. He didn't allow us to have any hand in it at all, except to pay the bills.
Q. Can you state why the notice of the annual meeting of August 5 1901, which is Complainants' Exhibit A,—It was stated this morning in the testimony that notice of the annual meeting of August 5, 1901, was sent out to all the members of the association, that as far as you know is correct?
A. I don't remember any such testimony this morning, but that is a fact, it was.
Q. You were not here I think at that time. That notice as sent

out did not contain any statement that any re-incorporation or change in the company would be attempted to be made at
807 that meeting, did it?

Mr. MITCHELL: We object to this as not the best evidence, because the notice itself is in evidence.

A. The notice will show for itself. But as I recollect it, it was simply an ordinary notice, the ordinary notice that is always sent out by a corporation of a regular annual meeting.

Q. The notice does show that no intimation of that kind was made. Can you tell me why the members were not informed that the directors contemplated this re-incorporation of the company?

Objected to by counsel for defendants as immaterial, incompetent and irrelevant.

A. There was no particular reason for it, except it is always understood by any member of any corporation that at a regular annual meeting any matter pertaining to the corporation or the affairs of the company may be considered. The notice sent out was the usual notice that is always sent out by all corporations of the regular annual meeting.

Q. With reference to this committee that has been spoken of, did not the members of that committee make some suggestions to you in regard to certain things that should be done in relation to the management of the company, in relation to the funds of the company, and especially in relation to your charges to the contingent fund and the credits to the premium fund, arising from this transfer of the members from assessment policies to guaranteed option policies?

808 Objected to by counsel for defendants as immaterial, incompetent and irrelevant, and as not the best evidence.

A. Except as contained in the report which the committee made, I do not recollect anybody making any suggestion; but I will say that Jacob Stone was exceedingly officious in the matter, and even directed us to employ his expert bookkeeper to devise a new method of keeping the accounts and to prepare a new set of books. All this time he was telling the members of the committee that the company was bankrupt, and would be in the hands of a receiver inside of a year. I know he tried his best to get into his report other false statements of fact, I mean other than those that are incorporated in it, but the other members of the committee would not consent to it and would not permit it.

Q. Didn't you tell some of the members of the committee and others that you wouldn't be guided in your actions by the statements of advice of mere accountants?

A. I told Mr. Jacob Stone when he undertook to direct us employ these accountants to prepare a new set of books, that we had opened our books to him for his inspection, and for the inspection of his

expert accountants, and that the company would permit them to examine them just as much as they saw fit; but when it came to the management of the insurance company, the officers elected to the management of the company would run it in the way they saw fit and that they wouldn't take any directions from him.

Q. From him?

A. Yes, sir. He was the only member of the committee
809 that made any suggestions or attempted to give any directions outside of the duties of the committee.

Q. Were not other members of the committee here for that purpose, to aid in the examination?

A. Other members were here for that purpose. They were here for the purpose of ascertaining the truth of the statements with reference to the affairs of the company and giving it to the members of the company. In my judgment Jacob Stone was here for quite another purpose.

The further taking of testimony in this case is now adjourned until such time time as may be agreed upon by respective counsel.

810 Pursuant to adjournment, the parties by their respective solicitors met at the office of the special examiner H. Harcourt Horn, Esq. on the 14th day of June A. D. 1902 at 10 o'clock a. m. when the following proceedings were had in the presence of said special examiner.

ELMER H. DEARTH, a witness of lawful age produced and sworn on the part of the defendants testifies as follows:

Examination in chief by Mr. PALMER:

Q. You are a resident of the city of St. Paul, are you not?

A. Yes, sir.

Q. How long have you resided in Minnesota?

A. 19 years.

Q. What is your present occupation?

A. Insurance commissioner of the State of Minnesota.

Q. How long have you been the incumbent of that office during your present term of office?

A. Since January, well, the latter part of January 1901.

Q. Did you hold that office prior to 1901?

A. Yes, sir.

Q. During what period?

A. During the time covering the period January 1897 down to January 1899, I think, or March 6th. I think I went out of office March 6th, 1899, on or about that date.

811 Q. During your two terms of office state whether or not you had occasion to examine different life insurance companies.

A. I did.

Q. Upon their application for a license to do business in this State?

A. Yes, sir.

Q. Both domestic companies and companies organized under the laws of other States?

A. Yes, sir.

Q. I will ask you, Mr. Dearth, at this point whether you are in any way connected with the Minnesota Mutual Life Insurance Company or the Bankers Life Association of Minnesota?

A. No, sir, neither as a policy holder or otherwise.

Q. Have you ever been?

A. I never have been.

Q. Mr. Dearth, can you state how many assessment life insurance companies have been licensed to transact business in the State of Minnesota, assessment or co-operative life insurance companies?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. In the neighborhood of 175 or 180.

Q. How long has there been an insurance department in the State of Minnesota?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Thirty years, to be exact thirty-one years.

Q. Do you know on the 1st day of January 1898, how many life insurance companies were licensed to transact business in the
812 State of Minnesota?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Eighteen, according to the records of the insurance department.

Mr. BYERS: In 1898?

WITNESS: Yes, sir, in 1898.

Q. Can you state of the total number of assessment life insurance companies, authorized to transact business in the State of Minnesota, what number of them had ceased to transact business, or had failed up to January 1st 1898?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, practically all of them outside of the eighteen that were authorized. There were not over 18 or 20 that were presuming to exercise any corporate existence. Some of them reinsured their business. My record of that year,—I have got the record—would show the exact number,—just the absolute number,—a statement of which I remember personally preparing.

Q. Well, you can refer to your record.

Mr. BYERS: Is that your official record?
WITNESS: Yes, sir.

A. You mean up to January 1898?
Q. Yes.
A. Well, that other question as to the number that was still in existence in 1898?
Q. Yes, the first of January 1898.
A. I understood you to say the year 1901. I was answering your question as of January 1901.

813 Q. Now please state if you know, what had become of these different companies which had been licensed to transact business, an assessment life insurance business in Minnesota, January 1st 1898?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Well, the larger majority of them had failed and gone out of the business.
Q. You may refer to your record, Mr. Dearth.
A. I have here the report of that year, and can tell you the exact number of companies, or associations of this class. Under the head of remarks in my table or detailed schedule, published in this report, appears what had become of all the companies, in case of their retirement from the State, or ceasing to transact business. I would have to refer to the schedule in order to give particulars in each case. My later report a year later, gives a full and detailed record of each company.
Q. If you are unable to state the number that had actually retired from business, will you state how many were still licensed to transact business in Minnesota on January 1st, 1898.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. There were forty licensed.
Q. Will you state how many were licensed to transact business in Minnesota in January 1901?

Objected to by counsel for plaintiff- as immaterial, incom-
814 petent and irrelevant.

A. Eighteen.
Q. Can you state how many are at the present licensed to transact an assessment life insurance business in the State of Minnesota at the present time?
A. Eleven.
Q. Are these companies that are now licensed of any size?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. They are not, with the exception of one, possibly.
Q. What company is that?
A. The Bankers Life Insurance Company of Des Moines, Iowa.
Q. What is the largest amount of insurance in force in any company now licensed to transact business in this State, that is, assessment life insurance business?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. The next largest is two millions of insurance in force.
Q. Of insurance in force?
A. Yes, sir, of insurance in force No, I am mistaken the amount is, seventeen millions.
Q. How much?
A. $17,000,000 in round numbers.
Q. What company is that?
A. The Knights Templars and Masons of Chicago.
Q. That is a fraternal society or company is it not?
A. No, a regular assessment, not fraternal. It has no local lodges, its business not even being confined to members of any secret society.

815 Q. I am speaking of co-operative assessment companies and not fraternal societies; will you state the largest amount of insurance in force in any company now licensed to transact business as an assessment life insurance company exclusive of the Bankers Life Association of Des Moines, Iowa.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. The Scandinavian Mutual Aid of Galesburg, Illinois.
Q. How much?
A. Eleven million seven hundred and five thousand. They have since gone out of existence as an assessment company. They are re-organizing on a new plan, recently voting to make this change.

Q. What is the next largest amount?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. The Scandinavian Relief Association of Red Wing.
Q. How much?
A. $5,840,000.
Q. And the next one?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. The Traders Mutual Life Insurance Company of Chicago.

Q. How much?
A. $5,199,000.
Q. And the next?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. There is one that should be placed ahead of these last
816 two; the American Temperance Life, of New York.
Q. How much?
A. Seven millions.
Q. The next one please.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. The Mutual Aid Society of Iowa City, Iowa. $4,346,000.
Q. What is the next?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Eight hundred and fifty-three thousand.
Q. What is the name?
A. The Surety Fund Life, of Minneapolis, Minnesota.
Q. How much?
A. $853,000.
Q. Will you state the total amount of assessment or co-operative life insurance, in force in Minnesota, on the 1st of January 1898?
A. The first of January 1898, it was $52,714,000, according to the records of the insurance department.
Q. Can you state the total amount of assessment or co-operative life insurance business in force in the State of Minnesota on the first of January 1899, if so, please do so.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. I have not the records here for that year.
Q. State the amount of assessment or co-operative insurance business in force in the State of Minnesota, on the first of January, 1901?

817 Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Nine million, nine hundred thousand.
Q. The first of January, 1902, can you state what that is?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. I gave it for the year 1901 before.
Q. I understood that this answer you gave is for 1902.
A. Yes, sir. That is for 1902, I made a mistake.

Q. Then the total amount of assessment or co-operative life insurance on the 1st of January, 1902, is nine million dollars, is that right?

A. Yes, first of January, 1902, the amount is nine million dollars. If you want it for the year 1901, I can give it to you.

Q. Well, will you give it to me for 1901?

A. It is $31,080,000.

Q. Now, Mr. Dearth, I think you stated that on January 1, 1902, there were eighteen assessment life insurance companies, licensed to transact business in the State of Minnesota.

A. No, sir.

Q. 1901, was it?

A. Yes, sir.

Q. How many companies are now licensed, can you state?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Eleven.

Q. Can you state what has become of the other companies, you said there were 170 that had been previously licensed to transact business in the State of Minnesota?

818 Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. My official report shows as follows: for the year ending,—January 1st, 1901, out of 158 companies no longer in existence in the State of Minnesota, it appears that 43 had failed, 56 withdrew, and afterwards ceased business; 33 re-insured their business with other companies, and twenty-three made no report.

Mr. BYERS: Made no report?

WITNESS: Yes, sir.

Q. Twenty-three you say?

A. Yes, and three changed their corporate titles.

Q. Was there any particular cause for the retirement of that large number of companies from the assessment life insurance business, or any reason for the cessation of such a large amount of insurance?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. I mean between the first of January, 1898, and the first of January, 1902.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Can you state the cause or reason, from your knowledge that

you have acquired in your dealings with life insurance com-
819 panies, in the insurance department.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

Q. In the performance of your duties as insurance commissioner?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

Q. Please state it.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. My observation and knowledge acquired from the investigation of these companies, and through the results shown by their sworn annual statements f-led with the insurance department, show that the plan of assessment insurance, whereby simply sufficient amounts are collected from the members to meet the current mortality cost, as the same accrues, finally results—universally,—in placing the companies in a financially embarrassed position; for the reason that as the average age of the policy holders or members increases the liability for death,—in other words, the mortality cost increases at such a rapid rate that it necessitates very heavy additional assessments levied as to result in the retirement from the membership of the younger ages who are in good health and can secure reliable insurance in the old line or legal reserve companies, leaving only those who have either reached the prohibitive age limit or are uninsurable owing to ill-health, unduly increasing the
mortality cost, rendering it practically impossible for those
820 remaining to meet their undue heavy assessment obligations,
and as a consequence, the company inevitably goes to the wall financially.

Mr. BYERS: I move to strike out the answer of the witness, on the ground that it is immaterial, incompetent and irrelevant, and not responsive to the question.

Q. At the present time, Mr. Dearth, how many co-operative or assessment life insurance companies, carrying any large volume of insurance, are there transacting insurance business in the United States?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

Q. I mean exclusive of fraternal societies, any society that is classed as a society having a ritual; I mean, strictly co-operative insurance companies.

Objected to by counsel for plaintiff- as immaterial, incompetent, and irrelevant.

A. I can not give the exact number, but there are very few, possibly thirty or thirty-five.

Q. Are there any legal reserve companies that were formerly transacting business on the assessment plan?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. During the past five years have any considerable number of assessment companies gone over to the legal reserve plan?

821 Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Is there an association of insurance superintendents and commissioners in the United States?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. How often does that association meet?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Annually.

Q. Are you a member of it?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Is the subject of assessment insurance ever discussed at these meetings?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Are the views of the heads of the different insurance departments expressed at these meetings?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. What is the general concensus of opinion, if there is
822 any, among the insurance departments, in relation to assessment life insurance?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. That the plan of assessment life insurance is absolutely impractical.

Q. Did you ever discuss with the officers or board of trustees of the Bankers Life Association of Minnesota, the feasibility of assessment life insurance, or the advisability of its going over on to a legal reserve basis.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. When did you discuss it with the trustees or officers of that company, when was the first time?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. I think the matter was first discussed in 1897, and more fully in 1898.

Q. Did you offer them any advice in that connection?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. What was that advice?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as hearsay evidence.

A. I advised them that they should secure a competent
823 actuary for the purpose of computing the reserve element under their policy contracts, both as to their own experience and also as to the experience provided under the established mortality tables namely the American experience and the combined or actuaries' tables, for the purpose of determining whether the amounts received from policy holders under the assessment plan, and the reserve accumulated from those payments were sufficient or insufficient to insure its future permanence as a reliable insurance incorporation, a corporation that would furnish absolute reliable indemnity for all future time to its members.

Q. With reference to advising as to whether they should reincorporate as a legal reserve company, did you give them any advice during 1899 or 1898, on that subject?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Once or many times?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. At various times, the subject was a matter of discussion between the officers and myself.

Q. You strongly advised it, did you not?

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant, and as leading.

A. I did.

824 Q. Can you state whether or not the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota, was examined by the insurance department of the State of Minnesota between your first and second term of office?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes; the records of my department show that it was.

Q. The reports on file?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Have you examined it during your present term of office?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. When?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. In August 1901, the examination was commenced.

Q. When was it completed, Mr. Dearth?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. It was completed, and a report submitted to the company October 3, 1901.

Q. How thorough an examination of the affairs of the company was made at that time?

825 Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. A very thorough examination, all records and accounts being carefully inspected and checked.

Q. The receipts and disbursements?

A. Yes, sir, the receipts and disbursements were checked; the assets and liabilities, all properties and securities were appraised; and the liabilities included the reserve value of all outstanding policy contracts, as computed under the standard mortality tables.

Q. Under the statute of Minnesota?

A. Yes, sir, under the statute of Minnesota; the American experience tables, 4 per cent., or rather the combined experience or actuaries' tables were used.

Q. Did you actually examine and check all of its securities, bonds, mortgages, notes, and everything of that kind?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. Did you actually value the real estate upon which these mortgage securities were?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. In what condition did you find them to be at that time?

Mr. BYERS: How, what do you mean?

Mr. PALMER: Read the question, it is plain.

826 Q. In what condition did you find them to be at that time?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as calling for the conclusion of the witness.

A. Well, the report shows the result of the examination, and duly shows that the company was absolutely solvent, under the test required by statute relative to the reserve valuation of its policies, including the liability for all unpaid losses reported adjusted or otherwise, and such other incidental liabilities as may have been outstanding at the time. The report indicated a surplus over all liabilities of $586,000.

Q. In the valuation of the policies and liabilities, did you include the mortuary assessment certificates as well as other policies?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

A. In accordance with the statute of the State of Minnesota?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. You have since made another examination, have you not, Mr. Dearth, for bringing the examination down from August last, to some time in March of the present year.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

827 Q. What was the financial condition of the company at that time?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as calling for the conclusion of the witness.

A. It shows a slight increase in surplus.

Q. In making this examination did you discover any improper use of the funds of the company, to the extent of a dollar?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as calling for the conclusion of the witness.

A. I did not.

Q. How were the records, in what manner were they kept?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as not the best evidence.

Q. Were they detailed and well kept, in an orderly and systematic manner, or otherwise?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant and as calling for the conclusion of the witness.

A. In a very orderly and systematic manner.

Q. What did your examination disclose with relation to the manner in which death losses were paid?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as calling for the conclusion of the witness.

A. Our examination indicated that the death losses were promptly adjusted and as promptly paid; generally paid
828 immediately upon receipt of satisfactory proofs.

Q. Was there any discrimination in the matter of payment and of prompt payment of death losses under the different forms of policies?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as not the best evidence.

A. No, sir.

Q. Were losses under the mortuary assessment certificates paid as promptly as those under any other policy?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant, and as not the best evidence.

A. Yes, sir.

Q. What was done with your report, Mr. Dearth, when it was made?

A. It was placed on file.

Q. I mean the report of your examination in August, from August to October?

A. Placed on file in the insurance department of the State, and a copy sent to the home office of the company.

Q. Do you know whether or not the company had that report printed, Mr. Dearth?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant, and as not the best evidence.

A. Yes, sir, they did.
Q. Have you seen a printed copy of that report?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. I have.
829 Q. Have you had occasion to compare it and certify as to its correctness?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant *and irrelevant.*

A. Very many times.

A certain paper is here marked Defendants' Exhibit 46.

Q. I call your attention to Defendants' Exhibit 46, and ask you if that is a printed copy of your report to which you have referred.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.
Q. With the exception of the first page, the outside page.

Objected to by counsel for plaintiff- as immaterial, and irrelevant.

A. I should say it was without any question.

Mr. PALMER: I offer in evidence all of Defendants' Exhibit 46, except the first or front page thereof, the latter being a heading of the company.
Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.
Mr. MITCHELL: You make no objection upon the ground that the original report is not produced here, do you?
Mr. BYERS: No.

Q. From your examination can you state in what manner the affairs of the company have generally been managed and are being managed?

830 Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as calling for the conclusion of the witness.

A. Yes, sir.
Q. Please state.

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant and calling for the conclusion of the witness.

A. In an honest, prudent, and efficient manner.
Q. From your recent examination can you state whether or not the company is now writing any volume of new legal reserve life insurance?

Mr. BYERS: I object to it as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. You may state from your examination whether the volume of business has been increasing from time to time from month to month, from the time the company first commenced writing legal reserve insurance business.

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant and as leading.

A. It has, according to the records of the company at the home office.

WITNESS: There is one addition I ought to make, to one of the answers I made.

Mr. PALMER: You may make it.

WITNESS: That is——

831 Mr. BYERS: What question is that, Mr. Dearth?

WITNESS: It is the question in which I advised them to make an investigation as to the sufficiency of the reserve accumulation, by having an actuarial computation made to this end.

Mr. BYERS: I will interpose the same objection as to a question that it is immaterial, incompetent and irrelevant.

WITNESS: The result of that was, that instead of about $900,000 of reserve which the company actually had in hand, there should have been an amount in excess of three millions, ($3,000,000) according to the standard mortality tables.

Q. That is on the assessment business?

A. Yes, sir, on the assessment business.

Q. In order to mature its contracts on that plan?

A. Yes, sir, to mature its contracts on that plan. At the rates they were paying, without any increase of same, the actuarial computation thus made, showed the impossibility of maturing the outstanding policy contracts.

Q. To mature the face of the contract?

A. Yes, sir.

Q. Have you an opinion from your knowledge of the company's affairs and your investigation, as to whether or not the holders of mortuary assessment certificates have been injured in any way by the company going on to the legal reserve business?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. I have.

Q. Will you state what that opinion is?

Mr. BYERS: I object to this as immaterial, incompetent and ir-

relevant, and because no foundation has been laid for the
832 question.

A. Their interests have in no way suffered, in my opinion; but, on the contrary, they are greatly enhanced.

Q. You may state whether or not the company maintains a reserve on all of its policies, as prescribed by the statutes of the State of Minnesota, which ensures the carrying out of all of its contracts, not only the strict legal reserve policies, or level premium policies, but mortuary assessment certificate contracts.

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as calling for a legal conclusion on the part of the witness.

A. It does.

Q. You may state whether or not as long as any life insurance company maintains from year to year a reserve in the way of assets, as required by the statutes of the State of Minnesota, it does not ensure the performance of every contract obligation.

Counsel for plaintiff- objects to the question as immaterial, incompetent and irrelevant, and as calling for a legal conclusion on the part of the witness.

A. The experience of all legal reserve companies maintaining such a reserve as is required under the statutes of Minnesota, indicates that such would be the result.

Q. A company could not fail that maintained the legal reserve, could it?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant, and calling for the legal conclusion of the
833 witness.

A. So long as its rates were sufficient, it could not.

Q. It could not fail, if it had the legal reserve on account of insolvency?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant, and calling for the legal conclusion of the witness.

A. No, sir, except by misappropriation of funds.

Q. If it did not impair the reserve?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. No, sir.

Q. As long as the reserve is maintained a company cannot fail and become insolvent, can it?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant, and calling for a legal conclusion on the part of the witness.

A. It could not.

Q. That is the test, regardless of the amount, the gross amount of assets and liabilities, is it not? Or the gross amount of insurance in force, or whether it is a large company, or whether it is a small company?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant, and as calling for the legal conclusion of the witness.

A. Yes, sir.

Q. The same test applies to all companies?

834 Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Yes, sir.

Q. In the proportion of assets to liabilities, how does this company compare with the older and larger mutual life insurance companies of this country?

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant.

A. Very favorably, it shows a very much larger ratio than the majority of companies.

Q. Does it show as large a ratio as that of any company which is licensed to do business in the State of Minnesota?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. It does.

Cross examination by Mr. BYERS:

Q. Did you make these examinations that you have spoken of, of the Bankers Life Association, and of the Minnesota Mutual Life Insurance Company, yourself?

A. No, I superintended the examination, I could not personally do all the work myself.

Q. The computation of the reserve, did you make that computation yourself?

A. No, sir. My deputy made that under my supervision, as the actuary of the department.

Q. In making the computation of the reserve required under the laws of the State of Minnesota that you have spoken of, I
835 think you said you included the reserve on mortuary assessment certificates.

A. Yes, sir.

Q. Do you remember what the amount of reserve on these mortuary assessments was on July 31, 1901, what it was taken at, Mr. Dearth?

A. It was valued upon the mid-year or mean basis. All this class

of policies at the end of the year from date of issue has no reserve accumulation, as the term of the policy has terminated. There are no terminal values on yearly renewal term policies.

Q. So the amount was the mean valuation?

A. Yes, sir, it was valued according to the premium rate charged. Namely, a yearly renewal term rate, required under the mortality tables.

Q. Do you know what is the amount of the reserve on that calculation due on these mortuary assessment certificates, December 31, 1901?

A. I am unable to state without referring to my records at the department.

Q. Would the amount be smaller than this in July?

A. There would be practically very little difference. The amount being effected by the number of policies which may have terminated and the acquisition of another year to the attained ages of assured. The mean or mid-year tables were in all cases used in computing the reserve.

Q. Then in this examination at which you say that the company should have had on hand $3,000,000, instead of nine hundred and eighty thousand dollars which it actually had, you didn't
836 figure this amount on the reserve then, as you have computed it?

A. No, it was giving the value of the policy as a whole life policy for its full face amount.

Q. Without reference to whether there was any reserve?

A. Yes, sir, without reference to whether there was any reserve.

Q. And without reference to the character and position of the assessment company?

A. No, sir. It was on the basis of the regular mortality tables on whole life policies.

Q. Supposing the company to be a legal reserve company, instead of an assessment company?

A. Yes, sir, and that all the policies really had a whole life term.

Mr. PALMER: But at the then attained age?

WITNESS: Yes, sir, at the then attained age.

Q. You mentioned in your testimony something about fraternal insurance and assessment insurance companies, is there any marked distinction between assessment companies on the co-operative plan and fraternal companies, as far as insurance is concerned?

A. Yes, sir.

Q. What is the difference?

A. Fraternal insurance is that which is supposed to furnish indemnity to the membership without any idea or purpose of gain or profit, the societies operating on the lodge plan, with a representative form of government, no soliciting agents being employed to secure applications of insurance. The fraternal or social fea-
837 ture is supposed to predominate in this class of institutions. Straight assessment insurance is secured by the associations or

companies under practically the same methods as those employed by regular old line companies. Soliciting agents are employed in securing applications for insurance policies, receiving compensation for their services either upon a commission or salary basis.

Q. What I want to get at is this. As far as the payment of death losses are concerned, they are the same, because they assess in proportion to the number of deaths that occur and according to the value of the number of deaths that occur.

A. Yes, sir, as far as the element of securing funds with which to meet their death losses, it is practically the same.

Q. These mortuary assessment certificates so-called, would be the same in both classes of companies.

A. Yes, sir, providing they assess the members purely upon the mortality cost, and not periodically upon an established table of rates.

Q. Of course you don't know about that?

A. No, sir.

Q. Isn't it a fact that the reports of insurance department of the State of Minnesota, show that taking the two classes of companies the assessment insurance companies and the fraternal societies together, that these two classes of companies carry a much larger amount of insurance in the State of Minnesota than the legal reserve or old line companies?

A. Yes, sir.

838 Q. Taking them together has not the amount of assessment and fraternal insurance combined, increased in the last ten years rather than decreased?

A. Yes, sir. The increase is all in the fraternal societies.

Q. Yes, of course. You mentioned that the insurance in force on January 1, 1901, was $31,800,000, and on January 1, 1902, it was $9,900,000.

A. Yes.

Q. What caused the greater portion of the decrease of that insurance in force in the State of Minnesota?

A. The transfer and re-organization of the Minnesota Mutual Insurance Company, formerly the Bankers Life Association of Minnesota. The Northwestern Life Association of Minneapolis which re-insured the business of the National Mutual Life Association of Minneapolis; these two companies became one company, and went out of the assessment class and re-organized under the stipulated premium plan or legal reserve, the reserve liability required to be maintained being practically the same as that of the old line companies. Also the retirement from the State, or the forced retirement of the Mutual Reserve Fund Life Association of New York. These four institutions practically account for the larger portion of that decrease.

Q. In relation to the nine million nine hundred thousand insurance in force now, is the insurance or the mortuary assessment plan held in force in The Mutual Life Insurance Company of Minnesota

the defendant in this case, included as a part of that amount of $9,900,000?

A. It is not.

Q. During your first term as insurance commissioner of
839 the State of Minnesota, did you have occasion to answer a good many letters of inquiry in relation to the standing and prospects of the Bankers Life Association of Minnesota?

A. Doubtless I did.

Q. Do you recollect, have you any independent recollection whether you did or not?

A. I don't recall any specific letters. That is, I have no definite recollection of any particular letters written. We are receiving letters of inquiry all the time relative to all classes of companies, ordinary life assessment, assessment life and others, as far as that is concerned.

Q. You went into office in 1900 did you not?

A. 1901; there was two years interval.

Q. Can you state whether or not you have had a good many letters of inquiry with regard to the standing and prospects of the Bankers Life Association, since you became insurance commissioner for the second time?

A. Yes, sir.

Q. Have you answered those letters?

A. I have universally.

Q. Can you give, without undertaking to state the letters themselves, the general tenor of your answers to those letters?

A. Well, I have answered them in a general way, that the company was persuing the only possible course to ensure its financial prosperity in the future; and the only way in which they could furnish reliable indemnity for the full face of the policy contract, or whatever it might call for; that assessment insurance had
840 been proven to be absolutely unreliable, and disappointing, and that it was impracticable from a reliable insurance standpoint. That the company was pursuing the only proper course.

Q. That they could?

A. That they could, if they were to give permanent insurance indemnity to the beneficiaries of its policy holders.

Q. Do you know what would be the effect upon the mortuary assessment insurance, of the company discontinuing the solisitation of members, and the procuring of insurance at that time, what would be the immediate effect?

A. I don't understand the question.

Q. Do you know what would be the effect of an assessment company discontinuing the solicitation and procurement of members, on the mortuary assessment plan?

Counsel for defendants objects to the question as immaterial, incompetent and irrelevant.

A. It would mean final dissolution, of course.

Q. As far as it was an assessment company?
A. Or any other kind of a company.

Re-direct examination by Mr. PALMER:

Q. State whether or not the inquiries concerning the Bankers Life Association, if you please, or the Minnesota Mutual Life Insurance Company, such as you have spoken of, related very largely to the present suit in which you are testifying?

841 A. I have had a great many of them. I don't know what proportion it would be. That has doubtless given rise to maybe 60 or 70 per cent. of the inquiries that we have received.

Q. Mr. Dearth, with reference to fraternal societies, they are all transacting business under a statute of Minnesota distinct from that concerning other companies?

A. The same statute, only a different provision.

Q. A different provision?

A. Yes, sir. They are all included in the same statute or the same laws. There are special provisions relating to fraternal societies.

Q. Relieving them from certain requirements of assessment companies?

A. Yes, sir, certain requirements.

Q. Are the larger fraternal societies continuing on by levying assessments from time to time, as mortality claims accrue, just sufficient to take care of those mortality claims, or are they taking steps to place themselves either upon level premiums, or to take as a basis annual premiums based upon one of the standard tables of mortality?

Objected to by counsel for plaintiff- as immaterial, incompetent and irrelevant.

A. Well, there is a movement that has been on foot, and very strenuously advocated and pushed by the larger fraternal societies for some years, to the end of establishing tables of rates based upon some recognized standard mortality tables; this movement being due to the fact that fraternal societies have been collecting

842 insufficient premiums, which they all are free to acknowledge.

Q. I believe there is what is known as a Fraternal Congress, is there not?

A. Yes, sir.

Q. Composed of the officers of the different fraternal societies in this country?

A. Yes, sir. This movement has practically been agitated through the Fraternal Congress, the membership of which includes the officers of the leading fraternal societies.

Mr. BYERS: I move to strike out the answer of the witness, as not being responsive to the question.

Q. You may state whether at these fraternal congresses any table of rates along the lines we have just mentioned was ever adopted.

Mr. BYERS: I object to the question as immaterial, incompetent and irrelevant, and as not the best evidence.

A. Yes, sir, there were. I have had copies mailed and submitted to me by the officers of the fraternal societies.

Q. In computing this reserve, which you said you recommended to be made by the actuaries on the mortuary assessment certificates, you said it was based upon the theory that they were whole life policies. You meant, did you not, from the date of the policy?

A. Yes, sir, from the date that the policy was issued.

Q. And the large deficiency between that reserve and the assets which the company had, and which would have been necessary as a reserve, if it had been carried as a legal reserve policy from its inception, was due to the failure of the company to collect

843 sufficient premiums, was it not?

A. Yes, sir, that is correct.

Q. And also upon the theory that the company was not to make any increase in its assessment rates?

A. Yes, sir.

Q. You were asked by counsel for plaintiff, what would be the result of the discontinuance of soliciting mortuary assessment insurance. You said the evident result would be dissolution. That would apply to legal reserve companies as well as to any other company? That is to say, eventually they will all die and the policies terminate and the company would cease doing business.

A. Yes, sir, upon the theory of the company was quitting business entirely and was not soliciting or writing any more.

Q. Of course, when a company, no matter whether an assessment company or any other company, ceases to write business, its business will go off the books, either by deaths, or by lapses?

A. Yes, sir, the old line legal reserve company is able to pay its last policy in full. Lapses, of course, help out the payments on those that remain. At the same time it is actually demonstrated by the mortality tables that the rates paid enables the company to pay all possible claims in full. That when the last man is left there will be sufficient funds to cover amount named in his policy.

Q. In other words, when a company becomes a legal reserve company it can establish rates of insurance sufficient to enable it to carry out all of its contracts entirely?

A. Yes, sir.

Mr. BYERS: That is, all its legal reserve contracts?

WITNESS: Yes, sir.

844 Recross-examination by Mr. BYERS:

Q. The difference then between an assessment company and a legal reserve company discontinuing business, is that the insurance

of a member in the legal reserve company will still be in force and paid on his death, while in the assessment company nothing will be paid him.

A. It would be all right if the assessment policy holders would meet or pay all the extra assessments, then they could pay the last man, the same as a legal reserve company, but the trouble is, they won't do it, or more likely in a majority of instances, are financially unable to, as the assessments reach such an abnormal figure.

Testimony closed.

845 (On the face of this is written in pencil "Give statement of Dec. 31 1901)

DEFENDANTS' EXHIBIT "1."

John F. Byers. Walter B. Whitcomb.

Law offices of Byers & Whitcomb, 435–437 Lumber exchange, Minneapolis, Minn.

M'CH 18, 1902.

Mess. How, Taylor & Mitchell.

GENTLEMEN: In addition to the matters concerning which we wish information from the books of the Bankers Life Association as mentioned in my former letter, we shall ask Mr. Putnam the amounts of the various funds of the association at the close of each fiscal year since 1884. The sources from which said funds were derived, and the amount, closely approximated, derived from each source mentioned.

It is assumed that those items were summarized at the end of each fiscal year as a number of them appear in the complaint made some time ago in the suit *vs.* Phillips Bloodgood and Carter. If such a summary was made it will answer the purpose, but of course the books should be shown. It may perhaps be proper to have the testimony taken in your private office so that the books could be easily procured.

Very truly yours, JOHN F. BYERS.

(On the back is written in pencil "Byers also wants No. of lapses on Dec. assessment) Cert. 69—am't 138000.

846 DEFENDANT'S EXHIBIT "2."

John F. Byers. Walter B. Whitcomb.

Law offices of Byers and Whitcomb, 435–437 Lumber exchange, Minneapolis, Minn.

MARCH 12, 1902.

Mess. How, Taylor & Mitchell.

GENTLEMEN: It has been agreed between Mr. Mitchell and me that, instead of requiring me to serve a *subpœna duces tecum*, you will have the proper officers have in Mr. Horn's office such books as will show, and the proper officer to testify as to the correctness of the items the following accounts.

1st. The state and amount of the funds denominated "Guaranty trust fund," "Mortuary reserve fund," "Mortuary fund," "Contingent fund" and "Operating fund" as they stood on Dec. 31st 1898, 1899, 1900, 1901 and July 31st 1901.

2nd. The statements of "Certificates in force" showing numbers of assessment certificates in force at various ages, as shown in "X" of your annual statements to insurance commissioners of Minnesota. This showing of certificates is wanted for Dec. 31 1898. Dec. 31 1899, Dec. 31 1900, Dec. 31 1901, and July 31 1901

847 (If Dec. 31 1898 is not available this may be waived as report does not seem to have been required at that time.)

3rd. Showing exhibit of policies for years ending Dec. 31 1898 to 1901 inclusive, as shown in Nos. VII, and VIII of insurance reports to ins. com. of Minnesota.

It was understood that no attempt will be made to get names and addresses of policy holders. Please see that these books etc. may be ready when Mr. Horn notifies you that he is ready.

V'ry truly yours, JOHN F. BYERS.

848 DEFENDANTS' EXHIBIT 42.

Important.

Regular December assessment for death losses. (392–401) (red ink).

Cortlandt M. Taylor, president; Douglas Putnam, secretary; C. H. Bigelow, treasurer.

Office of the Bankers Life Association of Minnesota.

ST. PAUL, MINN., *Dec. 4th*, 1899.

Samuel Wright.

DEAR SIR: At a meeting of the board of trustees of the Bankers Life Association, duly called and held at its office in St. Paul, Minnesota, the following resolution was adopted:

"Whereas among death claims which have been duly established and approved, are the following (red ink):

Name of deceased member.	Residence of deceased member.	Date of death of deceased member.	Number of memberships held by deceased at his death, and amount specified in each.
Ernest G. Reinhardt....	Roberts, Ill.....	May 5, 1899	One certificate for $2000
Charles Kruger.....	Duluth, Minn.....	May 22, 1899	One certificate for $2000
George F. Putnam.....	Kansas City, Mo...	May 30, 1899	One certificate for $2000
Abraham A. Devore.....	Chicago, Ill.....	June 6, 1899	One certificate for $2000
Justin B. Hicks.....	New Richmond Wis.	June 12, 1899	One certificate for $2000
849 Oscar B. Hillis....	Omaha, Neb.....	June 23, 1899	One certificate for $2000
John Dowlan.....	St. Paul, Minn.....	July 6, 1899	One certificate for $2000
Frank Schmidt.....	Marysville, Kans...	July 20, 1899	One certificate for $2000
Edward R. Dale.....	Marietta, Ohio.....	Aug. 12, 1899	One certificate for $2000
Andrew T. Sundal.....	Dell Rapids, S. D..	Aug. 17, 1899	One certificate for $2000

[Written across the face in red ink:] Copy.

"Therefore be it resolved, That on the fourth day of December, 1899, the members of the Bankers Life Association of Minnesota be and they are hereby severally and respectively assessed two per cent. of their respective guaranty deposits on account of each of said claims, to be collected and applied according to the articles of association." (Red ink.)

In accordance with the above resolution, you are hereby assessed the following amount hereinafter named and specified, in consequence of such of said death claims as have occurred since your certificate was issued, and you are hereby requested and notified to pay the following sum for the purpose of paying the losses of said association occasioned by the death of its member:

On your policy	No. 16068	10	assessments at .82.....	$8.20
" " "	No. 16069	10	" " .82.....	8.20
" " "	No. —— —	"	" —.....	
Total.....				$16.40

[Written across the face in red ink:] Copy.

Pay at the First national bank of your city.

Payment must be made on or before *January 3rd, 1900*, in order to protect your membership in the association. (Red ink.)

850 The association reserves the right to require for readmittance a satisfactory medical examination at the expense of the delinquent member.

Please notify us of any change or error in your address.

The sending of this notice, or payment of the above amount, shall not be held to waive any forfeiture or lapse of membership if previous assessments or dues remain unpaid; nor will payment of the above amount re-admit any member in default in consequence of any guaranty trust fund note unpaid at maturity.

Yours Truly, BANKERS LIFE ASSOCIATION OF MINNESOTA,
By DOUGLAS PUTNAM, *Secretary.*

Time expires Wednesday, Jan. 3rd, 1900, on which date right to benefits is terminated on all memberships in arrears. To avoid possibility of terminating your insurance you are urgently requested to remit at once. (Last sentence in red ink.)

851 DEFENDANTS' EXHIBIT 43.

Certificate of Health.

To the Bankers Life Association of Minnesota, St. Paul, Minn.

Whereas, my membership in the Bankers Life Association of Minnesota has hitherto terminated, and whereas, application is hereby made for my re-admittance as a member of said association, I therefore declare and warrant that I am now, on this 10″ day of October, 1901, in good health, free from disease and of temperate habits. It is understood and agreed that the consideration for my re-admittance, if granted, shall be based upon the truth of the foregoing statements.

ESDRAS B. TRUBEY.

Witness: —— ——. 17376-7-8.

852 DEFENDANTS' EXHIBIT 44.

Form No. 51.

Timothy R. Palmer, president; Gen. J. B. Sanborn, vice president; Douglas Putnam, secretary; Charles L. Greene, medical director; Clarence E. Secor, field manager; John A. O'Shaughnessy, field manager.

The Minnesota Mutual Life Insurance Company (organized in 1880).

$2,800,000.00 paid in death losses. Assets $1,600,000.00.

Trustees:

Charles H. Bigelow, pres. St. Paul Fire & Marine Ins. Co.
Maurice Auerbach, president Union bank, and St. Paul Title & Trust Co.
John B. Sanborn, John B. and E. P. Sanborn, attorneys.
Crawford Livingston, capitalist and ex president St. Paul Gal Light Co.
James F. R. Foss, Minneapolis, ex president Nicollet nat. bank.
Kenneth Clark, president Merchants nat. bank.
Albert H. Lindeke, Lindeke, Warner & Schurmeier, wholesale dry goods.

ST. PAUL, MINN., *Aug.* 15, 1901.

To the members of the Bankers Life Association of Minnesota:

It is with great satisfaction and pleasure that we are able to inform the members that at the annual meeting held August 5, 1901, insurance to an amount exceeding $9,000,000 was represented in person and by proxy; that the secretary's report disclosed a large growth in the assets, a decided increase in financial strength, and a most gratifying condition of company affairs in general, and was
853 promptly adopted; and that articles of reincorporation as an *old line* company, with "The Minnesota Mutual Life Insurance Company" as its future name, were adopted by an almost unanimous vote, there being but one person who voted against the resolution.

At the close of the meeting one of the oldest of the mortuary assessment members offered the following resolution:

"Resolved, That it is the sense of this meeting that the officers and trustees are entitled to the thanks of every member of the Bankers Life Association for their able, conscientious and faithful administration of the affairs relating to the management of the company."

The motion was seconded by several others of the mortuary assessment members, and was unanimously carried.

The Minnesota Mutual Life Insurance Company now goes before

the world and into the insurance field as a full fledged old line company, stronger in point of assets to liabilities—including legal reserve—than any company west of Pennsylvania with one exception, and equipped with the latest and most attractive forms of policies, based upon the lowest of premium rates; and with a large number of agents in the field will at once commence to write its share of new business.

Although every member holding a mortuary assessment certificate has been given a fair opportunity to transfer to the stipulated premium plan, the management has concluded for a limited time to give the few members remaining on the mortuary assessment plan the privilege of
854 *exchanging their assessment certificates for either of the new forms of policies, based upon the same premium rates as other members have been given in the past. The probability of further increase in the mortuary assessments still continues, and for this and other reasons the trustees and officers believe it for the best interests of the members and the company that transfers be made to the new plan in all cases where it is possible.*

However, the trustees and officers also desire to impress upon the minds of members who may find it impossible to transfer, and of those who are not disposed to do so but prefer to take the risk of increased assessments, that the rights of the members on the old plan will be fully protected, and that just so long as any member makes payment of assessments and annual dues in accordance with the terms of his contract, and continues his certificate in force, his beneficiary is certain of receiving payment of the full amount promised, upon his death.

Assuring you it will afford the officers pleasure to answer all inquiries and furnish any information desired, I am,

Very respectfully yours,

TIMOTHY R. PALMER, *President.*

855 DEFENDANT'S EXHIBIT 45.

Mailed Aug. 31/01.

Important.

Annual dues for operating expenses for the year commencing September 2nd, 1901. (Red ink).

Office of the Minnesota Mutual Life Insurance Co.

ST. PAUL, MINN., *Sept. 2nd*, 1901.

E. B. Trubey, ——.

DEAR SIR: Your annual dues for operating expenses for the year commencing Sept. 2nd, 1901, are now due and payable at the Merchants Loan & T. Co. bank, of your city, and in amounts as follows:

On your certificate	No. 17376	$6.00
" " "	No. 17377	$6.00
" " "	No. 17378	$6.00
Total		$18.00

Charter requires that payment be made on or before *September 30th, 1901*, in order to protect your membership in this company. (Red ink).

The company reserved the right to require for readmittance a satisfactory medical examination at the expense of the
856 delinquent member.

Please notify us of any change or error in your address.

The sending of this notice, or payment of the above amount, shall not be held to waive any forfeiture or lapse of membership if previous assessments or dues remain unpaid; nor will payment of the above amount re-admit any member in default in consequence of any guaranty trust fund note unpaid at maturity.

Yours truly,

THE MINNESOTA MUTUAL LIFE INSURANCE CO.,
By DOUGLAS PUTNAM, *Secretary.*

Time expires Monday, Sept. 30th, 1901, on which date right to benefits is terminated on all memberships in arrears. To avoid possibility of terminating your membership you are urgently requested to give above notice your immediate attention. (Red ink.)

857 DEFENDANTS' EXHIBIT "46."

STATE OF MINNESOTA,
Department of Insurance.

ST. PAUL, *October 3rd*, 1901.

The Minnesota Mutual Life Ins. Co., St. Paul, Minn.

GENTLEMEN: I submit herewith report covering examination made by this department of the business and financial affairs of the Minnesota Mutual Life Insurance Company, of St. Paul, Minn., covering the period beginning December 31st, 1899, and ending with July 31st, 1901, being up to the date that the company was reincorporated and reorganized under the so-called old line or legal reserve laws of Minnesota, on which date the name was changed from the Bankers' Life Association to its present title.

The investigatio- shows that in the transfer of the business from the assessment plan to a legal reserve basis, the management has honestly, equitably and rigidly conserved the interests and
858 rights of each individual policy holder, whose personal consent has in all cases been secured. It is also shown that no part of the guaranty trust fund, so-called, has been diverted to other

than the purpose for which, under the constitution of the company, it was originally created, and likewise all the other funds of the company were found to have been properly and legally disbursed.

Up to the time of closing the examination (July 31st, 1901), the records show that 75 % of the old assessment business has been replaced by regular legal reserve policy contracts, with adequate premium rates, ensuring permanent and reliable indemnity to the policy holders. The course which has been, and is being, pursued by the management in effecting these transfers is most commendable, as it leaves no ground for complaint on the part of the policy holders, in the way of any arbitrary or mysterious method in effecting the necessary change.

The securities representing the company's invested assets have been carefully appraised, the values as given in this report being sufficiently conservative, with the possible exception of one or two of the smaller real estate mortgage loans. As regards these exceptions, I am assured that the same will be replaced, or ample additional security obtained.

It is noticeable that of the company's total assets nearly $600,000 are represented by U. S. Government bonds, while all the other bonds and stocks owned, or held as collateral, are equally as satisfactory.

The examination shows that every dollar received, as well
859 as every dollar disbursed, has been rigidly and honestly *well as every dollar disbursed, has been rigidly and honestly* accounted for, vouchers in all cases, for disbursements, being in the possession of the company, and in the case of all death claims, the canceled policies. .

It further appears from the records that not one dollar of funds belonging to the policy holders has, in any instance been diverted from its proper channel. It appears that every dollar represented by liens is secured by the individual endorsement, or note, of the policy holder, same bearing 5% annual interest. The same might be practically termed lien notes, as the same have not been charged against the policies by any arbitrary action, through the passage of any resolution or by-laws, and in no case do they exceed the reserve required to be maintained under the actuaries' table of mortality, with interest at 4%. The total amount of said lien-notes as of July 31st 1901, was $597,564.24, as will be noted by the detailed schedule of admissible assets contained in this report. Said total assets are shown to be $1,688,459.95. The total liabilities amount to $1,101,622.89, of which sum $1,069,024.89 represents the net or reserve value of the outstanding policy contracts computed according to actuaries' table of mortality, with 4% interest, the computation of said reserve having been made by this department in connection with this examination.

It seemed proper to include among the company's liabilities the sum of $18,598, representing the amount of guaranty deposit fund,

which, under certain contracts originally issued by the com-
860 pany, is returnable to the beneficiaries, in addition to the face of the policy.

Our investigation shows a most commendable promptness on the part of the company in the adjustment and payment of its death losses, payment in nearly all cases being made immediately upon receipt of satisfactory proofs.

It seems proper to state, in closing this report, that the company is fortunate in its present official management, all the principal executive officers being men of well known ability and experience, which should insure for the corporation as now reorganized upon the old line or legal reserve plan, a prosperous and successful future.

Very respectfully submitted.

ELMER H. DEARTH,
Insurance Commissioner.

ST. PAUL, MINN., *October 1st*, 1901.

Hon. Elmer H. Dearth, insurance commissioner.

DEAR SIR: Pursuant to your instructions I have made an examination of the Minnesota Mutual Life Insurance Company. This company commenced business August 6th, 1880, as the "Bankers' Life Association of Minnesota," under the laws of Minnesota, as a mutual co-operative assessment life insurance association, and on August 5th, 1901, reincorporated under the provisions of chapter 175 of the General Laws of 1895, as amended by chapter
861 143 of the General Laws of 1901, as a regular old line life insurance company. An examination was made by this department in April, 1900, of the business and affairs of the company, covering the year 1899, down to and including July 31st, 1901. I checked very carefully each item of income and disbursements during the time mentioned, and found checks and vouchers for each expenditure. I found the annual report of the company, for the year 1900, to be correct with the exception of an item of $733.64—agent's debit balances secured—which should have been carried in the balance, increasing it that amount, and as will be seen later, I have corrected the balance as of Dec. 31, 1900. I have filled out an annual statement blank and file it with this report. It may be referred to for more particular details.

The following is a summary of the income and disbursements for the year 1901, to July 31st also the assets and liabilities as of that date:

Net ledger balance Dec. 31, 1900, as per Co.'s report			$1,413,011.18
Assets not reported last year			733.64
Correct balance Dec. 31, 1900			$1,413,744.82
Income 1901 *to July* 31*st.*			
First year premiums	$102,844.71		
Renewal premiums	150,912.97		
Total premium income		$253,757.68	
Interest on loans on mortgages of real estate	$1,704.74		
Interest on premium notes	158.71		
862 Interest on lien notes	10,443.35		
Interest on bonds	17,966.00		
Interest on deposit in banks	951.48		
Total interest income		31,224.28	
Lien notes		192,861.65	
From other sources		258.31	
Total income to July 31st			478,101.92
			$1,891,846.74
Disbursements During 1901 *to July* 31*st.*			
Death claims	$155,667.00		
Premium notes voided by lapse and lien-notes canceled	60,953.23		
Surrender values paid	958.60		
Total returned to policy holders		217,578.83	
Commissions to agents	$44,486.25		
Salaries and expenses of agents	6,599.39		
Salaries of officers	9,842.47		
Salaries of home office employés	7,051.09		
Medical exam. fees	31.00		
863 Taxes on premiums	615.64		
Insurance department fees	1,027.91		
Rent	1,265.10		
Advertising and printing	1,191.52		
Postage	1,040.00		
Legal expenses	5,307.15		
Furniture &c.	237.00		
Collections and exchange	847.97		
Interest on investment at time of purchase	1,222.07		
Incidentals	4,020.28		
Total general disbursements		84,774.84	
Total of all disbursements			302,353.67
Balance			$1,589,493.07
Ledger Assets.			
Mortgage loans on real estate	$42,700.00		
Loans made to policy holders	1,175.94		
Premium notes on policies in force	12,030.09		
Bonds	891,342.29		
Stocks	8,500.00		
Cash in banks	36,301.40		
864 Cash in office	9.40		
Lien notes on policies	597,564.24		
Agents' debit balances	238.66		
		$1,589,862.02	
Less ledger liabilities		368.95	
			$1,589,493.07

Non-ledger Assets.

Interest on accrued mortgages	$354.96	
Interest accrued on bonds and stocks	4,635.75	
Interest accrued on lien-notes	13,985.48	
Net amount of uncollected and deferred prem's	85,307.36	
Total		104,283.55
Gross assets		$1,693,776.62
Deduct assets not admitted:		
Agents' debit balances	238.66	
Com. payable on prem. notes	5,078.01	
		5,316.67
Net total admitted assets		$1,688,459.95

865 *Non-ledger Liabilities.*

Net value of policies in force, according to actuaries' table of mortality, with 4 per cent. interest	$1,069,024.89	
Death losses reported	8,000 00	
Death losses resisted	6,000 00	
Guaranty deposit fund returnable at death	18,598 00	
		$1,101,622.89
Net surplus		586,837.06
		$1,688,459.95

Assets.

The assets of the company are exceptionally clean and reliable. The bonds are largely U. S. Governments bonds, and the others are almost equally as gilt edged. The mortgage loans are amply secured, and the stocks are of first class banks; the cash deposited in banks has been verified by certificates from the banks' officers. The lien-notes are not what are usually termed "liens," such as are created by the arbitrary action of a board of directors, or the passage of a resolution or by-law. In this case they are created by and with the written consent of the policy holder and are made a part of the contract by endorsement thereon. These lien-notes never exceed the reserve required to be maintained by regular old
866 line companies, computed according to the actuaries' table of mortality and four per cent. interest, but in all cases have been considerably reduced below this amount by a credit, which is allowed to members surrendering their mortuary certificates and accepting policies with premium charges, calculated according to the above tables.

These lien-notes bear interest at the rate of five per cent. compounded annually, and if not paid, are deducted from the face of the policy at death.

Loaning to policy holders the reserve value, with assignment of policy as sole security, or the acceptance of a lien-note as part payment of premium—not exceeding the reserve secured by the terms of the policy—is not an uncommon practice among the regular old line companies, and is counted as a first-class asset.

Liabilities.

The net value of policies in force, according to the actuaries' table and four per cent., which constitutes the main item of liability, was computed by D. C. Lightbourn. I have taken the lists of policies used by him in making such computation, and have carefully compared them with each policy in force. A number of changes were made, but these did not materially change the aggregate amount arrived at by him. These changes though slight, I reported to Mr. Lightbourn, and the figures used in this report are as corrected.

867 *Death Claims.*

I found the company very prompt in its payments of death claims, not taking advantage of the time limit provided in the constitution and by-laws, but almost invariably making payment upon satisfactory proofs of death. I also found canceled policies and receipts foe all claims paid.

The books and accounts of the company are very carefully and accurately kept, and arranged in such a manner that it is an easy matter to obtain from them any information required regarding the condition of the company. Now that the company is operating on the old line plan, it will be necessary to make certain changes in the system of bookkeeping, which changes have been duly suggested, and am informed they will be carried out.

I wish to express my thanks to the officers and clerks, each and all, for the courtesy shown and assistance rendered me during the examination. They were at all times frank and open and desirous for a thorough and complete examination.

Respectfully submitted,

T. F. MARTIN, *Examiner.*

868 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants; ESDRAS B. Trubey, Intervening Plaintiff,

vs.

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

Order.

This matter came on to be heard befor- this court at the Federal building in the city of St. Paul, this 12th day of May, 1902, upon

the petition of the defendants for an order extending the time within which defendants may take their testimony, and for the appointment of an additional examiner to take such testimony; John F. Byers, Esq., appearing for the plaintiffs, and William D. Mitchell, Esq., appearing for the defendants, and it appearing that L. B. Trott is a suitable and proper person to be appointed an additional examiner in this matter; it is ordered that the said L. B. Trott be and hereby is appointed an additional examiner to take the testimony in this cause in accordance with the rules of practice in such case provided;

It is further ordered that the time within which the defendants may take their testimony in this cause be and hereby is extended to and including the 31st day of May, 1902, and the time within which the plaintiffs may take their testimony in rebuttal be and hereby — extended to and including the 14th day of June, 1902.

CHARLES F. AMIDON, *Judge.*

(Endorsed:) Order extending time to take testimony and appointing additional examiner. Filed May 12th, 1902. Henry D. Lang, clerk by Louise B. Trott, deputy.

869 United States Circuit Court, District of Minnesota, Third Division.

J. C. IVERSEN ET AL., Complainants,
vs.
MINNESOTA MUTUAL LIFE INSURANCE COMPANY and Others, Defendants.

UNITED STATES OF AMERICA, *District of Minnesota,* } *ss:*

I, L. B. Trott, duly appointed additional examiner in the above entitled cause do solemnly swear that I will faithfully and fairly hear and examine the testimony to be adduced therein, and make a just and true record thereof, according to the best of my understanding and ability. So help me God.

L. B. TROTT.

Subscribed and sworn to before me this 4th day of June A. D. 1902.

CHARLES L. SPENCER,
Clerk of U. S. District Court, District of Minnesota,
By MARGARET L. MULLANE,
Deputy Clerk.

[Seal of Court.]

870 Circuit Court of the United States, District of Minnesota, 3rd Division.

J. C. IVERSEN ET AL., Complainants,
vs.
MINNESOTA MUTUAL LIFE INSURANCE COMPANY ET AL., Defendants.

Pursuant to an order appointing me examiner in this case, dated the 12th day of May A. D. 1902, and the consent of the solicitors for the respective parties, the following proceedings were had on May 17th A. D. 1902, to-wit:

J. F. Byers, Esq., solicitor for complainants, and Wm. D. Mitchell, Esq., solicitor for defendants, appeared before me, whereupon the testimony of S. Herbert Wolfe, on behalf of the defendants was taken to-wit:

871 S. HERBERT WOLFE, after being first duly sworn, testified as follows in answer to questions by Mr. Palmer.

Q. Mr. Wolfe, where do you reside?
A. In the burrough of Manhattan, city of New York.
Q. What is your profession or occupation?
A. Consulting actuary.
Q. How long have you been occupied or how long have you practiced that profession?
A. About ten years.
Q. By consulting actuary, what do you mean?
A. One who is consulted in reference to actuarial matters by individuals, corporations and governments.
Q. Are you in any way associated with the defendant, The Minnesota Mutual Life Insurance Company, otherwise than as a witness in this case?
A. I am not.
Q. By "consulting actuary"—I presume it may be or is unnecessary, but I will ask you—you mean in its application to life insurance?
A. To life insurance and fire insurance, casualty insurance and insurance generally.
Q. Are you employed or connected with the department of any government or State as consulting actuary?
A. I am connected with a number of State governments in the capacity of consulting actuary and examiner.
Q. Are you connected or associated with any life insurance corporations as consulting actuary?
A. I am.
Q. Will you describe or define briefly the different kinds of life insurance companies?

A. Life insurance may be broadly divided into three classes of corporations. First, the legal reserve or old line companies. Second, the assessment companies; and third, fraternal organizations.

872 Q. Now will you briefly explain on what basis the legal reserve life insurance companies operate, and why they are called legal reserve life insurance companies?

Mr. Byers: Objected to as incompetent, irrelevant and immaterial and not within the issues raised by the pleadings.

A. The essential characteristic of a legal reserve life insurance company is an absolute inflexability of premium and an accumulation of a reserve in accordance with the statutory requirements of the various States, the functions of which reserve is to maintain the premium level during the term expressed in the policy contract.

Q. What is the basis of the premium charged by legal reserve companies?

Mr. Byers: The same objection.

A. Premiums in legal reserve companies are based upon tables of mortality with a certain rate of interest.

Q. Are there any particular tables of mortality in general use in this country?

A. Yes, sir.

Q. Will you mention them, please.

A. The combined experience or actuaries table and the American experience table.

Q. Are there any other tables used by legal reserve companies in this country?

A. In very exceptional cases a company may have had sufficient experience along certain lines to get up a table of its own. For instance, certain of the large companies may have a tropical table representing their experience on lives in South America; but in general it may be stated that these two tables I have mentioned before are the ones which are employed universally in this country.

Q. Are you familiar with the statutes of the several States of this country in so far as they relate to the maintenance of a legal

873 reserve by a legal reserve company?

A. I am.

Q. Is any mortality table specified in these several statutes?

Mr. Byers: Objected to as incompetent, irrelevant and immaterial and not the best evidence.

A. It is.

Q. How many different mortality tables are specified in these several statutes?

Mr. Byers: The same objection.

A. Two.

Q. Of course there are no two tables specified in any particular State?

Mr. BYERS: The same objection.

A. Yes, there are.

Q. Well, I mean not in operation at the same time or applicable to the same class of policies.

A. Yes.

Q. Will you state what those two tables are?

Mr. BYERS: The same objection.

A. The American experience and the combined or actuaries experience. You understand the combined is the same as the actuaries.

Q. Yes, actuaries or combined. They are sometimes spoken of as the actuaries and sometimes as the combined?

A. Yes, sir.

Q. As a matter of fact, every State in the Union requires the maintenance of a legal reserve by a legal reserve life insurance company, based upon either the actuaries' or the American tables, do they not?

Mr. BYERS: The same objection.

A. Some of the newer Western States and Territories have no provision in their statutes for the employment of any particular table, it being understood in those cases that the company
874 must furnish a certificate of valuation upon the table employed in its own State.

Q. But where the statute requires the maintenance of a reserve based upon any particular table, it is either the actuaries or the American, isn't it?

Mr. BYERS: The same objection.

A. It is.

Q. Will you state the origin of the actuaries or combined experience mortality table?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial and not within the issues raised by the pleadings.

A. The actuaries table was published in 1843 under the direction of Jenkin Jones and represented the observations of seventeen English life officers upon approximately 62,000 policies.

Q. And that has continued without revision since its origin?

A. Yes, sir.

Q. What was the origin of the American experience mortality table, and upon what is that based?

Mr. BYERS: The same objection.

A. That is based upon the observations of about 68,000 lives and

represents the graduated experience of the Mutual Life Insurance Company, of New York, and was published about 1868.

Q. You stated that these premiums charged by legal reserve companies were based upon one or the other of these tables, with a certain per cent. of compound interest sufficient, as I understood you, to maintain the premium at its level during the expectancy of the insured?

Mr. Byers: The same objection.

A. Yes; and in addition to that a percentage called a load-
875 ing providing for the expenses of the office.

Q. What is the basis of that premium which provides for the reserve and the loading?

A. The basis is the experience table.

Q. Well, the original premium is a net premium, isn't it?

Mr. Byers: The same objection.

A. The original premium is a net annual premium derived from these experience tables I have mentioned.

Q. And to that net premium is added a certain percentage or loading to cover the expense?

Mr. Byers: The same objection.

A. That is right.

Q. Will you please explain, Mr. Wolfe, more in detail what you mean by charging a sufficient premium to build up a reserve and maintain the premium at a level during the life expectancy of the insured?

Mr. Byers: The same objection.

A. As an insured grows older, the cost of providing him with insurance increases and in order to prevent this increase it is apparent that an excess must be charged in the earlier years in order to provide for a deficiency in the later years. This excess, together with the interest accumulation, represents the legal reserve on the policy.

Q. And why does the cost increase as the insured grows older?

Mr. Byers: The same objection.

A. Because the probability of his dying becomes greater.

Q. In other words, according to the experience upon which these mortality tables you have mentioned is based, the numbers of deaths occurring increases as the ages mentioned in certain classes increase. Is that correct?

876 Mr. Byers: The same objection.

A. May I state the answer in my own language?

Q. Certainly.

A. What I desired to state was that the probability of dying, which

represents the ratio between those living and those dying at that age, becomes greater as the insured becomes older.

Q. If only the actual cost at the attained age at the inception of the policy were charged, what would be necessary in order to pay the cost of carrying insurance in the later years or as the years progressed?

Mr. BYERS: The same objection.

A. To increase the premium in accordance with the laws of mortality.

Q. So that the probability of dying increases year after year, does it?

Mr. BYERS: The same objection, and leading.

A. It does.

Q. What effect would this have from year to year on the amount of the cost of carrying the insurance? In other words, would the cost of carrying the insurance increase from year to year?

Mr. BYERS: The same objection.

A. It would.

Q. Does the probability of dying increase in the same ratio during the full life of a man or during the latter years, in the same ratio, say, from 60 to 80 as it does from 30 to 40?

Mr. BYERS: The same objection, and it is not the best evidence.

A. Oh, no. The increase in later years is very much in excess of that in earlier years.

Q. You say these premiums are based upon one or the other of the tables of mortality mentioned by you, with a certain per
877 cent. compound interest. What rate of interest or what rates of interest are in use by the several legal reserve companies in this country?

A. Some of the earlier policies still in force are based upon 4½ per cent., some are based upon 4 per cent., and those issued at the present time are based upon either 3½ or 3 per cent.

Q. What have been the statutory requirements of the several States in that regard during the past twenty years, say?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial, not the best evidence; witness has not shown that he is qualified as a legal expert.

A. The statutory requirements have changed in accordance to the decline in interest rates. Some of the statutes provided 4½ per cent. interest; later they provided 4 per cent., and some to-day are on a 3½ and 3 per cent. basis.

Q. How recently have the States enacted laws requiring a 3½ or 3 per cent. rate?

Mr. BYERS: The same objection.

A. I recall one State that enacted such a statute about one year ago.

Q. Most of them have been passed in the past five years?

Mr. BYERS: The same objection.

A. All of the statutes which require a rate of interest of less than 4 per cent. have been passed within the past five years.

Q. How many States do you recall that *the* require the use of 3 per cent.?

Mr. BYERS: The same objection.

A. I recall New York as one of them, and as all of the others require an additional reserve to be carried when guaranties are in excess of their statutory requirements the effect is the same as though they had a lower standard of valuation.

878 Mr. BYERS: I move to strike out the answer as not responsive to the question, except the first four words.

Q. What guaranties do you refer to, Mr. Wolfe?

A. The surrender values under their contracts.

Q. That is, if they guarantee a surrender value in excess of a reserve based upon 4 per cent., they would have to maintain a reserve equal to these guaranties?

Mr. BYERS: The same objection.

A. Yes, sir.

Q. In other words, if they guaranteed a surrender value which could only be guaranteed upon a reserve*d* created upon a 3½ per cent. basis, then they would be charged with that liability?

Mr. BYERS: The same objection.

A. They would.

Q. There are a very large number of the States, particularly in the West and South, that still require the maintenance of a reserve only on the 4 per cent.?

Mr. BYERS: The same objection and leading.

A. Yes, sir.

Q. What effect, if any, does the rate of interest employed have upon the amount of the premium charged?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial and not within the issues raised by the pleadings.

A. The premium increases as the rate of interest employed decreases, as it requires a larger amount of money when invested at a smaller rate of interest to produce a result equal to a smaller amount invested at a higher rate of interest.

879 Q. As I understand you, then, the excess of premium in the earlier years of the policy are presumed to have been invested at a certain rate of interest, either 4 per cent, 3½ or 3 per cent.?

Mr. BYERS: The same objection.

A. Yes sir.

Q. And if invested at 3½ per cent., the premium would necessarily be larger than it would if invested at 4 per cent.?

Mr. BYERS: The same objection.

A. Yes sir.

Q. How many legal reserve companies are now on a 3 per cent. basis, if you can recall?

Mr. BYERS: The same objection.

A. I cannot state the exact number, but I would say a great many of them.

Q. How many were on a 3 per cent. basis prior to January 1st, 1902?

Mr. BYERS: The same objection.

A. A considerable number also; I cannot state the exact number.

Q. Those companies which have gone on to a 3 per cent. basis have done so within the past five years, haven't they?

A. Yes sir.

Q. Have the smaller legal reserve companies, many of them, adopted the 3 per cent. basis?

Mr. BYERS: The same objection.

A. Either the 3 or 3½ per cent. basis.

Q. Are there very many of them that have adopted the 3 per cent. basis?

Mr. BYERS: The same objection.

A. A number of them have adopted the 3 per cent. basis.

Q. Take the Mutual Life, of New York; not as one of the smaller companies, but as one of the larger ones, on what basis is it?

Mr. BYERS: The same objection.

880 A. On a 3 per cent. basis, practically.

Q. And the New York Life?

A. On a 3 per cent. basis, practically

Q. And the Equitable?

A. The same with the Equitable.

Mr. BYERS: Note the same objection.

Q. You say "practically," Mr. Wolfe. Is that by reason of the guaranties, the surrender value that is guaranteed in their policy?

Mr. Byers: The same objection, and leading.

A. Not only that, but on account of the employment of these special tables which I have mentioned for special tropical risks.

Q. Now, how are legal reserve premium rates classified with regard to the different kinds of policies that are written?

Mr. Byers: The same objection.

A. Policies may be broadly divided into four classes. First, those providing insurance for a year or a term of years. Second, those providing insurance for the whole life, with premiums payable until the death of the insured. — those providing insurance for the whole of life with the payment of premiums limited to a terms of years; and fourth, those providing not only for the payment of the policy at the death of the assured, but also the amount of the policy should he survive a certain period.

Q. The latter policy is what is commonly known as an endowment policy?

A. Yes, sir.

Q. And the first policy mentioned is commonly known as a term policy?

A. Yes, sir.

Q. Term policies are by their terms payable when?

A. At the death of the assured, providing said death occurs within the term mentioned.

Q. Term policies are issued either for one, two or three,
881 four or five, or any other number of years, are they not?

A. Yes, sir.

Q. Is there such a thing — a renewable term policy?

A. There is.

Q. Take, for instance, a one year renewable term policy. Is there such a thing as that?

Mr. Byers: Objected to as incompetent, irrelevant and immaterial, and not within the issues raised by the pleadings.

A. There is.

Q. Do some contracts provide that it may be renewed every year, from year to year, during the life of the insured?

Mr. Byers: The same objection.

A. They do.

Q. What is the basis of the premium rate or charge on a term policy? Take, for instance, a one year renewable term policy with the privilege of renewing from year to year during the life of the insured?

Mr. Byers: The same objection.

A. The probability of dying is indicated by the mortality table.
Q. The rate for the one year term is based on the probability of dying within that year at the present age?

Mr. BYERS: The same objection.

A. Yes, sir.
Q. The rate for the second year is an increased rate based upon the probability of dying within that term?

Mr. BYERS: The same objection.

A. Yes, sir.
Q. And so on until they reach old age or the later years of life, providing the policy is kept alive by renewal?

Mr. BYERS: The same objection.

A. Yes, sir.
882 Q. After reaching the age of fifty does the rate increase in greater proportion than it does prior to that time?

Mr. BYERS: The same objection.

A. Yes, sir.
Q. Now, the premium rate for a whole life policy which you have described, what is that based on?

Mr. BYERS: The same objection.

A. That is based upon the probability of dying during the entire term of years, together with the adjustment which I have mentioned before whereby the premium instead of increasing is made level throughout the life of the assured.
Q. Is any premium rate taken as a basis for computation of the rate on all other forms of policies?

Mr. BYERS: The same objection.

A. I don't exactly understand that question.
Q. Well, what I have in mind is this. There is a basic net premium rate, isn't there?

Mr. BYERS: The same objection.

A. Well, is this explanatory of your question or another question?
Q. Yes, this is explanatory. Isn't there a basic net premium rate?
A. For every particular form of policy, yes.
Q. Perhaps I am displaying my ignorance now. I will follow through and see where I come out.
A. I will amplify that last answer. The premium for each form of policy is calculated directly from the mortality table and it is derived through the commutative columns.
Q. Mr. Wolfe, are one year renewable term policies renewable at the option of the insured during his life, sold to any great extent.

883 Mr. BYERS: I object to that question as incompetent, irrelevant and immaterial, and not within the issues.

Q. I mean by legal reserve companies?
A. No, sir.
Q. Why?

Mr. BYERS: Objected to for same reasons.

A. For the same reason that any policy which provides for the payment of greatly increased premiums during the more advances stages of a man's life when his productive period had ceased must necessarily cause dissatisfaction.
Q. What has been the experience in that regard in the past?

Mr. BYERS: The same objection.

A. That policy holders become unable to pay the increased premium and are either compelled to lapse or to change their policies to a form which provides for a level premium throughout the balance of the contract.
Q. Mr. Wolfe, are the two tables of mortality which you have mentioned and which were adopted by the State governments and by the legal reserve companies generally published in well recognized and generally established form?
A. Yes, sir.
Q. Have you those tables with you?
A. Yes, sir.
Q. In what form?
A. In the form of a book entitled "The Principles and Practice of Life Insurance. Sixth edition, originally prepared by Nathan Willey."
Q. State to what extent the work to which you have referred is used, if at all, by insurance departments of this country and by actuaries and by legal reserve life insurance companies?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial.

884 A. The book which I have mentioned provides a convenient way of getting together most of the necessary tables on the actuaries' four and the American four and a half, four, three and a half and three per cent. tables.

Mr. BYERS: I move to strike out the answer as not responsive.

Q. You may state whether or not this work to which you have referred is *is* in general use by actuaries and by insurance departments and by legal reserve life insurance companies in this country?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial.

A. It is.

Q. How long has this work been in general use? Not this particular edition, but this work?

Mr. BYERS: The same objection.

A. The first edition appeared in 1872, and since that time the editions have been amplified, bringing the book into more general use.

Q. State whether it is recognized by insurance departments, by actuaries and by legal reserve life insurance companies as a standard work and as an authority in actuarial science?

Mr. BYERS: The same objection.

A. The tables given therein are recognized as being accurate compilations, and as such are in general use.

Q. Is there any material difference between actuaries' experience table of mortality and the American experience table of mortality?

Mr. BYERS: The same objection, and it is not the best evidence.

A. Yes, there is a difference between them.

Q. What is the difference?

Mr. BYERS: The same objection.

A. It is the difference which naturally arises from the in-
885 crease in medical knowledge and the increased facilities for watching insured lives which would naturally take place between a table published in 1843 and one published in 1868. A comparative chart showing the premiums calculated on the two tables will, however, show a not very material difference.

Q. Which rates would be the highest or is the highest?

Mr. BYERS: The same objection.

A. In the lower ages——

Q. Say between what ages if you can approximately, please.

A. Between the age of twenty and thirty the American experience is a trifle higher than the combined experience.

Q. That is, the mortality is higher?

A. Yes, sir.

Q. The mortality is greater and the premium rates slightly higher?

Mr. BYERS: The same objection.

A. Yes, sir. Between thirty and about seventy-seven combined experience shows a higher premium, while at eighty the American experience again assumes the higher rate.

Q. Have you the actuaries' table with interest at any rate other than four per cent.?

A. I have a premium for a one year term insurance and also for whole life insurance worked out on actuary experience both at three and three and a half per cent. interest.

Q. Will you turn to the book "Principles and Practice of Life

Insurance" and mention the page on which the actuaries' table of four per cent. appears?

A. The actuaries' experience table of mortality?

Q. I mean the experience table of mortality without regard to the premium rate.

A. The actuaries' experience table of mortality without regard to the rate of interest appears on pages 74 and 75.

886 Mr. PALMER: I now offer pages 74 and 75 of the book entitled "Principles and Practice of Life Insurance" referred to by the witness, and I will ask that the same be marked Defendant's Exhibit —.

Mr. BYERS: That is objected to as incompetent, irrelevant, and immaterial, not within the issues of the pleadings, and no proper foundation laid.

Mr. PALMER: I will ask that the same be marked Defendant's Exhibit —. We will insert it afterwards. May it be understood, Mr. Byers, that in making up the record of this deposition Mr. Mabey or the special examiner may copy these two pages?

Mr. BYERS: Oh, certainly.

Mr. PALMER: There will be no objection made to that.

Mr. BYERS: Oh, no.

Q. Now, will you please turn to the pages of the book referred to whereon appear the American experience table of mortality?

A. That is it. (Indicating.)

Q. Will you state on what pages of this book this table is found?

A. 222 and 223.

Mr. PALMER: I now offer in evidence pages 222 and 223 of the book described as "Principles and Practice of Life Insurance," referred to by the witness, and ask that these two pages be marked Defendant's Exhibit —.

Mr. BYERS: That is objected to as incompetent, irrelevant and immaterial, not within the issues of the pleadings, and no proper foundation laid.

(Defendant's exhibit above referred to is set out in full at
887 the end of this deposition.)

Q. Mr. Wolfe, you may state whether this book you have referred to, "The Principles and Practice of Life Insurance," contains the table of the net annual premium for a whole life policy at different ages based on the actuary or combined experience table of mortality with four per cent. interest.

Mr. BYERS: The question is objected to as incompetent, irrelevant and immaterial, and not within the issues of the pleadings, and as calling for a conclusion on the part of the witness.

A. It does between the ages of 20 and 70.

Q. On what pages does that table appear?

A. On page 92; the third column, counting the age column, is the first none.

Q. In the column marked "Age" appears the different ages?

A. Yes.

Q. And in the column marked "Whole life" appears the net premium for whole life policy?

A. The net annual premium for a whole life policy.

Mr. PALMER: I now offer in evidence that part of page 92 of the book referred to consisting of a general heading which reads as follows: "Net annual premiums for $1,000, combined experience, four per cent." and the column marked at the top "Age," being the first column on the left of the page, and the column marked at the top or head "Whole life," being the third column of the table counting from left to right, and ask that this exhibit be marked Defendants' Exhibit —.

Mr. BYERS: Same objection as to the last offer.

Q. Now, in the column marked at the top "Age" is stated the different ages, and what does that refer to; age at what time?

888 A. Age of the insured at the time that the policy is issued.

Q. On a line with the age in each particular case appear figures in the column marked at the top "Whole life." What do those figures indicate?

A. The net annual premium which will be sufficient when payable throughout the life of the assured, and compounded at four per cent. per annum, to pay each policy at its maturity.

Q. You say this is the net annual premium, by that what do you mean, Mr. Wolfe? by the word "net"?

Mr. BYERS: That is objected to as incompetent, irrelevant and immaterial.

A. I mean that the figures given contain no provision for expenses of administration.

Q. I think you stated that this book does not contain the net premium rates based on the actuaries' or combined experience table of mortality with interest at either three and — half or three per cent., did you not?

A. Yes, sir.

Q. Have you the net premium rate for a whole life policy at different ages of entry based on the actuaries' or combined experience table of mortality with three and a half per cent. interest?

A. I have.

Q. In what form?

A. In the form of the results of my calculations.

Q. That is to say, you have made your own calculations based upon this experience table of mortality?

A. Yes, sir.

Q. Will you produce that table, Mr. Wolfe.

(Produced and marked Defendants' Exhibit —)

Q. Does this paper which you have produced and which has been marked Defendants' Exhibit — contain anything besides the table about which I just asked you?

A. Yes.

889 Q. What does it contain? A brief description I mean, not to state its contents.

Mr. BYERS: That is objected to.

A. It contains the annual premiums for whole life insurance at various ages between 20 to 80 upon the combined experience table of mortality at three per cent., three and a half per cent., and four per cent. interest, and the American experience table with the same rates of interest.

Q. Three per cent., three and half, and four per cent.?

A. Yes, sir.

Q. You say at certain ages. These ages are included in that table, are they not?

A. Yes, sir.

Q. Who computed this table, if you know?

A. I computed the one marked "Combined experience three and a half per cent." The one marked "Combined experience three per cent." was computed by Jenkin Jones. The one marked "Combined experience four per cent." was computed from the book entitled "Principles and Practice of Life Insurance."

Q. I will interrupt you there. Did you compute any of these tables except the "Combined experience with three and a half per cent."?

A. No, sir.

Mr. PALMER: I offer in evidence that part of Defendants' Exhibit — consisting of a general heading which reads as follows: "Premiums for whole life assurance for $1,000," and the sub-heading, "combined experience," and the column marked at the top "Age," and the column marked at the top underneath the words "combined experience three and a half per cent."

Mr. BYERS: That is objected to as incompetent, irrelevant and immaterial, and not within the issues raised by the pleadings.

890 Q. Mr. Wolfe, referring to this exhibit, I will ask you what is intended by the figures in the column marked at the top "Age"?

Mr. BYERS: The same objection.

A. The figures stated therein indicate the age of entry of the policy holder.

Q. What is meant or intended by the subheading "Combined experience"?

Mr. BYERS: The same objection.

A. By that is meant that the calculations were made upon the combined experience table of mortality.

Q. And what is meant by the sub-heading underneath the words "combined experience," "three and a half per cent."?

Mr. BYERS: The same objection.

A. That means that that rate of interest was employed in the calculation.

Q. What is intended in the column marked at the top "Three and a half per cent." underneath the words "combined experience" by the figures?

Mr. BYERS: The same objection.

A. The net annual premium for whole life insurance per $1000 on the combined experience table of mortality with three and a half per cent. interest at the age given upon the same line.

Mr. PALMER: May the examiner copy that part of this exhibit which is offered, and certify to it?

Mr. BYERS: Yes, sir.

Q. Mr. Wolfe, does the book you have referred to and which is entitled "The Principles and Practice of Life Insurance" con-
891 tain a table of the net annual premium for whole life insurance per $1000 based upon the American experience table of mortality with three per cent. interest?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial, and not the best evidence.

A. It does.

Q. Does it contain a table of the net annual premium for whole life insurance per $1000 based upon the same table of mortality with three and a half per cent. interest?

Mr. BYERS: The same objection.

A. It does.

Q. Does it contain a table of the net annual premium rate for whole life insurance per $1000 based upon the same table of mortality with four per cent. interest?

Mr. BYERS: The same objection.

A. It does.

Q. Will you please state on what page the net annual premium rate based on this table of mortality at three per cent. appears?

Mr. BYERS: The same objection.

A. Page 366.

Q. What is indicated in the column on page 366 which is marked at the top "Age"?

Mr. BYERS: The same objection.

A. The age of entry of the insured; that is, the age of the insured when the policy was issued.

Q. What is intended in the column on this page which is marked at the top "Whole life"?

Mr. BYERS: The same objection.

892 A. The net annual premium per $1000 on the American experience table of mortality with three per cent. interest for a whole life assurance at the ages given.

Q. State whether or not these two columns in addition to the general heading of the table constitute the entire table of net annual premiums for a whole life policy of $1000 on the basis and with the rate of interest specified as it appears on this page.

Mr. BYERS: The same objection.

A. Yes, sir.

Q. In other words, on page 366, and embraced under the same general heading, appear the tables of net annual premiums for other forms of policies?

A. Yes, sir.

Mr. PALMER: I now offer in evidence and ask to have marked Defendants' Exhibit — that part of page 366 of the book entitled "The Principles and Practice of Life Insurance" referred to by the witness composed of the general heading, which reads "Net annual premiums per $1000 American experience three per cent.," and the column marked on the top "Age," being the first column on the left, and the column marked on the top "Whole life," being the second column of the table counting from left to right.

Mr. BYERS: I object to that as incompetent, irrelevant and immaterial, and not within the issues raised by the pleadings.

Q. Mr. Wolfe, will you now turn to the page on which appears the net annual premium for whole life assurance per $1000 based on the American experience table of mortality with three and a half per cent. interest?

A. Yes, sir.

Q. On what page will that table be found?

A. 324.

893 Q. What is indicated in the column on page 324 marked at the top "Age"?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial, not within the issues raised by the pleadings, and as not the best evidence.

A. The figures in the column headed "Age" indicate the age of entry; that is, the age of the insured at the time the policy was issued.

Q. And what is indicate- in the column on page 324 marked at the top "Whole life"?

Mr. BYERS: The same objection.

A. In this column are given the annual premiums per $1000 based on the American experience table of mortality with three and a half per cent. interest for whole life policies.

Q. At different ages as shown, I suppose?

A. Oh, yes. That is shown here. At the various ages.

Q. State whether or not these two columns constitute the table of net annual premiums for whole life insurance per $1000 based upon the American experience table of mortality with three and a half per cent. interest as it appears on page 324?

Mr. BYERS: The same objection.

A. They do.

Mr. PALMER: I now offer in evidence and ask to have marked Defendants' Exhibit— that part of page 324 of the book entitled "The Principles and Practice of Life Insurance" composed of the general heading, which reads as follows: "Net annual premiums per $1000 American experience three and a half per cent.," and the first column at the left of the table marked at the top "Age," and the column marked at the top "Whole life," being the second column of the table counting from left to right.

894 Mr. BYERS: Objected to as incompetent, irrelevant and immaterial, and not within the issues raised by the pleadings.

Q. Mr. Wolfe, will you now state on what page of the book entitled "The Principles and Practice of Life Insurance" appears the table of net annual premiums for whole life insurance per $1000 based upon the American experience table of mortality at four per cent.?

A. Page 276.

Q. Will you state what is indicated by the column marked at the top "Age"?

Mr. BYERS: The same objection.

A. In this column are shown the various ages of entry; that is, the various ages of the insured at the time that the policy was issued.

Q. What is indicated in the column marked at the top "Whole life"?

Mr. BYERS: The same objection.

A. The net annual premium per $1000 on the American experience table of mortality with four per cent. interest for a whole life assurance at the various ages stated,

Q. Mr. Wolfe, state whether or not the general heading on page 276 which reads, "Net annual premium per $1000 American expe-

rience four per cent," and the column marked at the top "Age," and the column marked at the top "Whole life," constitute the whole of the table of net premiums for whole life insurance per $1000 based on the American experience table of mortality with four per cent. as it appears on page 276 referred to?

Mr. BYERS: The same objection.

A. Yes, sir.

Mr. PALMER: I now offer in evidence and I asked to have marked Defendants' Exhibit — that part of page 276 of the book
895 referred to composed of the general heading "Net annual premiums per $1000 American experience four per cent.," and the first column at the left of the table marked at the top "Age," and the column marked at the top "Whole life," being the third column of the table counting from left to right.

Mr. BYERS: The same objection.

Q. Mr. Wolfe, will you state, if you can, whether or not this book entitled "The Principles and Practice of Life Insurance" contains tables or any table, of net premiums for yearly term insurance at different ages based upon the actuaries' or combined table of mortality.

Mr. BYERS: Objected to as incompetent and irrelevant.

A. Yes, sir, it does.

Q. Tables of what net annual premium rates for one year term insurance does it contain?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial.

A. It contains a table showing the net annual premiums per $1000 for one term assurance upon a combined experience four per cent. table.

Q. It contains the one table only?

A. Yes, sir.

Q. Based upon the actuaries' or combined experience table?

A. Yes, sir.

Q. On what page does that table appear?

A. Page 91.

A recess was here taken until 1.30 p. m.

Afternoon session.

Q. Mr. Wolfe, will you define assessment insurance or describe it as it is generally understood?

A. By assessment assurance I understand that form of
896 insurance where the premiums are dependent upon the amount realized from levying an assessment upon the assured,

such assessments to be either in accordance with a table of ratios stated in the policy or dependent entirely upon the mortality experienced by the association.

Q. Are the premiums or assessments in assessment companies fixed when levied?

A. No, sir; they are very flexible so that an insured never knows what he is going to pay. His assessments may be doubled within a year, or within two years, for all he knows.

Q. Well, is there any certainty of increase with increase of the average age?

A. It depends upon the initial premium charged by the association. I never knew any assessment association whose rates did not have to be increased.

Q. What caused or causes the increase?

A. The natural operations of the laws of mortality; the fact that assessment associations are less stable and less reliable than legal reserve companies, and the fact that when the premiums are advanced those insured who are in good insurable health inevitably drop their policies and go into level premium companies, leaving a class of risks which unduly increase the mortality costs of the association.

Q. Are there any assessment companies which you know, or were any which you have known, operated or managed upon premium or assessment rates based upon either of the tables of mortality which you have mentioned in your testimony?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial, and not within the issues in the case.

A. Yes, sir.

Q. Are any of those companies now in existence transacting business as assessment companies?

897 Mr. BYERS: The same objection.

A. No, sir.

Q. Do you recall the name of any assessment company that transacted an assessment business on premium rates or assessments based upon either of the tables of mortality which you have mentioned?

Mr. BYERS: The same objection.

A. I am under the impression that the Hartford Life Insurance Co. transacted its assessment business upon a table of ratios based upon the American experience tables. This company also does an old line business, and my impression is that it is now an out and out old line company.

Mr. BYERS: I move to strike out that answer as not responsive to the question.

Q. Now, Mr. Wolfe, did the Hartford Life write whole life contracts, or did it write a yearly term contract?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial.

A. As an assessment company it wrote term contracts.

Q. And the premium rate which it adopted based upon the tables of mortality was for a term policy?

Mr. BYERS: The same objection.

A. Yes, sir. They issued contracts upon the back of which were printed a table of ratios based upon the American experience table, which ratios were used in levying the assessments which in amount were dependent upon the death loss experience.

Q. In other words, it was in fact what is commonly known as a step or net premium?

A. Yes, sir.

Q. Increasing from year to year?

A. Increasing from year to year.

Q. Do you know how many assessment companies are
898 now transacting assessment life insurance business in this country?

Mr. BYERS: The same objection.

A. There are only a few of them; I don't think I can recall more than one or two. I think the Bankers Life, of Des Moines, is the only one left. There may be a number of other small ones. The Bankers Life Association, of Iowa, and the Des Moines Life Association. That is about all.

Q. Do you know how many assessment life insurance companies have gone out of business entirely during the last ten years? and I don't ask you to include any assessment company which has reinsured its business or gone on to a level premium basis, but assessment companies that have gone out of business entirely and wound up?

Mr. BYERS: That is objected to as incompetent, irrelevant and immaterial.

A. There are hundreds of them; I don't know the exact number.

Q. Well, approximately.

A. I should say there were at least 200.

Q. How many companies are there now transacting a so-called stipulated premium insurance business or a legal reserve business which were formerly so-called assessment companies, if you know?

Mr. BYERS: The same objection.

A. About eighteen.

Q. If you can, please give the names of those companies, stating whether they are now so-called premium companies or legal reserve companies, and when they became such.

Mr. BYERS: Do you ask that question drawing a definition be-

tween stipulated premium and reserve? Is there a differ-
899 ence? Do you mean there is a difference between stipulated premium and legal reserve companies?

A. Oh, yes.

Mr. PALMER: There has been nothing to show that.

A. I understand that. I will give that later.

Mr. BYERS: I will object to the question as incompetent and irrelevant. Are you going to state this from your own memory or from memorandum?

A. I am stating this from a memorandum.

Mr. BYERS: Made by you at the time these things occurred?

A. No, it was not. I would not be very apt to make a memorandum of every insurance company.

Mr. BYERS: I object to it on the ground that the evidence offered is not the best evidence.

Q. What are you testifying from, Mr. Wolfe?

A. I am testifying from an exhibit entitled "List of companies," giving the names of all active United States life insurance companies, together with the location of the head office, the names of the president and secretary, the capital stock, the year of incorporation, the year when business was commenced; also showing the age of the various companies at January 1, 1902, as legal reserve organizations and rank in the same. This table was compiled by a statistician who gets this out every year in conjunction with other data in reference to life insurance companies, and this is from time to time—in fact every year—this is checked up by the companies in question so that I am reasonably sure it is correct.

Q. Now, Mr. Wolfe, having your attention called to these several companies, do you remember of your own knowledge the fact
900 of their having been assessment companies and having been transformed into legal reserve companies, independent of this paper?

A. I do, most of them.

Q. Just give the names of those you do remember of your own knowledge having your attention called to the name of the company from these statistics.

Mr. BYERS: From this memorandum?

Mr. PALMER: Yes.

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial.

A. The Bankers Life Insurance Company, of the City of New York.

Q. Just the date when they were converted.

A. Commenced business as a reserve company?

Mr. BYERS: What do you know of your own knowledge when they did that, without referring to this memorandum?

A. Yes, commenced business as a legal reserve company in 1899.

Mr. BYERS: Can you make that statement without that memorandum, Mr. Wolfe?

A. Well, I couldn't remember the names until I saw them here. There are thousands of companies in the United States, and looking at this memorandum just refreshes my mind.

Mr. BYERS: It was not a memorandum made by you. I shall object to a statement from the memorandum.

A. Then there was the Boston Mutual Life Insurance Company, of Boston; that took place the same year, about 1899. And the Fidelity Mutual Life Association, of Philadelphia, about the same time. The Mutual Reserve Fund Life Association, of New York, permitted to do business as an old line company about two
901 years ago. There was the Interstate Life, of Indianapolis; I think that was about 1897.

Q. Do you know on what plan the Chicago Life Insurance Company, of Des Moines was operated?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial, and not within the issues in the pleadings.

A. That is now operating on a legal reserve basis, although it was an assessment company.

Q. Mr. Wolfe, you haven't the memorandum before you at this time have you?

A. No, sir.

Q. You are testifying now from your recollection?

A. Yes, and I have been since I started to answer this question.

Q. Did you state about when the Chicago Life Insurance Company became a legal reserve company, between what dates?

A. No, I didn't. I think it was about 1899, though.

Q. If you don't recall the exact date, you may state between what years and make it broad enough.

Mr. BYERS: The same objection.

A. It was between 1890 and 1902.

Q. I want you to get as near as you can to it to be reasonably safe, that is all.

A. I think it was between 1897 and 1902.

Q. Do you know on what plan the Des Moines Life Insurance Company, of Des Moines, is now transacting business?

Mr. BYERS: The same objection.

A. It is now transacting business on a legal reserve basis; it was an assessment company.

Q. Can you state approximately when it became a legal reserve company?

Mr. BYERS: The same objection.

902 A. All of those companies practically became legal reserve companies during the same period.

Q. Does that apply to all those you have mentioned?

A. Yes, with the exception of the Mutual Reserve which I stated happened about two or three years ago.

Q. If there are any exceptions to that in any of the companies I call your attention to hereafter will you be kind enough, Mr. Wolfe, to mention it?

A. I will.

Q. The Economic Insurance Company of America, of Wilmington, Delaware; do you know on what plan that company is doing business?

Mr. BYERS: The same objection.

A. It is a legal reserve company, but that was transferred quite a long time ago.

Q. The Fidelity Mutual Life Insurance Company, of Philadelphia; do you know what plan that is doing business on?

A. I mentioned that in my testimony.

Q. You mentioned that in your testimony since I have been interrogating you?

A. Yes. No, that was something which I knew of myself.

Q. Well, what plan is that doing business on?

Mr. BYERS: The same objection.

A. The legal reserve basis, changed from an assessment.

Q. The Franklin Life Insurance Company, of Springfield, Illinois. Do you know what plan that is doing business on?

Mr. BYERS: The same objection.

A. That is doing business on the legal reserve basis.

Q. What was it prior to being transformed into a legal reserve company, if you know?

903 A. I don't remember, Mr. Palmer, whether that was changed or not; I know it is now doing business on that basis.

Q. The Interstate Life Assurance Company, of Indianapolis?

Mr. BYERS: The same objection.

A. Now doing business on a legal reserve basis, changed from an assessment.

Q. The Kansas Mutual Life Insurance Company, of Topeka, Kansas?

Mr. BYERS: The same objection.

A. That is now a legal reserve company, changed from an assessment. That transfer was some time ago; I think about 1895, I don't know exactly.

Q. The Meridian Life & Trust Company, of Indianapolis, Indiana?

Mr. BYERS: The same objection.

A. That is now a legal reserve company; was an assessment company.

Q. The Minnesota Mutual Life Insurance Company?

Mr. BYERS: That is objected to.

A. That is a legal reserve company, formerly an assessment company. That re-incorporation took place about a year ago, I believe.

Q. Missouri State Life Insurance Company, of St. Louis?

Mr. BYERS: That is objected to. Same objection.

A. That is an old line company; was an assessment.

Q. I think you mentioned the Mutual Reserve Fund Life Insurance Co.?

A. Yes, I did.

Q. Northern Central Life Insurance Company, of Toledo, Ohio?

Mr. BYERS: The same objection.

A. I don't know anything about that company.

Q. Security Mutual Life Insurance Company, of Binghamton?

Mr. BYERS: The same objection.

904 A. I have already mentioned that company.

Q. Security Trust & Life Insurance Company, of Philadelphia?

Mr. BYERS: The same objection.

A. That always was a legal reserve company.

Q. The State Life Insurance Company, of Indianapolis?

Mr. BYERS: The same objection.

A. Now a legal reserve company; was formerly an assessment organization.

Q. Mr. Wolfe, do you know the conditions in relation to each of these several companies which you have mentioned that caused and led to the transformation from an assessment to a legal reserve company?

Mr. BYERS: That is objected to as incompetent, irrelevant and immaterial, and not within the issues, and not the best evidence.

A. I do.

Q. State them, please.

Mr. BYERS: The same objection.

A. The objection of the public to placing its insurance in companies transacting business upon an assessment plan; the lack of confidence of the public in corporations of this nature, owing to the numerous failures and retirements which had occurred among them, due to the fact that insufficient premiums had been collected to enable these corporations to properly furnish the insurance which they claimed to. All of these companies contributed to the necessity for re-organizing upon a legal reserve basis.

Q. Did the old line or legal reserve companies cut any figure in making assessment insurance unpopular? I mean by any overt acts.

Mr. BYERS: That is objected to as incompetent, irrelevant
905 and immaterial, no proper foundation laid, and not the best evidence.

A. I really don't know.

Q. What I mean is whether the representatives of the old line companies were constantly spreading literature and advertisements seriously reflecting upon and tending to discredit assessment insurance?

Mr. BYERS: The same objection.

A. I know that they did.

Q. How about legislation in State legislatures in the several States?

Mr. BYERS: The same objection.

A. The large number of failures and retirements among assessment companies caused adverse legislation to be enacted.

Q. I call your attention particularly to the State of Massachusetts. How about that?

Mr. BYERS: The same objection.

A. In Massachusetts they enacted statutes which to all intents and purposes abolished assessment insurance in that State.

Q. Mr. Wolfe, during the past ten years how familiar have you been with the rulings of the several insurance departments and their reports upon assessment companies?

A. I have carefully examined them and am familiar with them.

Q. You have been associated with many of the departments more or less

A. Yes, sir; quite a number of them. In fact, I was appointed by the insurance commissioner of Connecticut to make a special study of the conditions of the assessment companies of that State.

Q. The corporations of that State or companies licensed to do business in that State?

906 A. No, the assessment corporations of that State.

Q. How did the insurance departments, so far as your

knowledge and observation extends, look upon and treat assessment insurance during the past seven or eight years?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial.

A. There was a tendency among insurance departments generally to exercise a more rigid supervision over this class of corporations owing to the manner in which they had been conducting their business and for the reasons which I assigned before.

Q. Did that feeling of distruct, or rather dissatisfaction, always exist or is that something which gradually grew up owing to the experience of assessment companies in this country?

Mr. BYERS: The same objection.

A. I explained in my previous answer the reason for this mistrust.

Q. I don't know but you did. Mr. Wolfe, will you briefly describe or define fraternal insurance as you understand it, or rather as it is generally understood?

Mr. BYERS: Objected to as incompetent, irrelevant and immaterial, and not within the issues in the pleadings.

A. By fraternal insurance I refer to those organizations which are supposed to furnish insurance for the benefit of their members without any idea of gain or profit, and furthermore those which operate on the lodge or ritual plan, employing no agents to solicit business.

Q. Are you familiar with the larger and more important fraternal societies that also furnish to their members life insurance at the present time?

907 Mr. BYERS: The same objection.

A. Yes, sir.

Q. Will you enumerate a few of the largest and leading societies?

Mr. BYERS: The same objection.

A. The American Legion of Honor, the Royal Arcanum, the Woodmen of the World, the Junior Order of United American Mechanics. Is that enough?

Q. What is the largest one in this country—in the world?

Mr. BYERS: The same objection.

A. I think that the Royal Arcanum is perhaps the largest.

Q. How about the Modern Woodmen of America?

Mr. BYERS: The same objection.

A. I really don't know which of these two is the larger.

Q. You didn't mention that, did you?
A. Yes.
Q. The Modern Woodmen, did you?
A. Yes.
Q. Do you know anything about the history of fraternal societies in their relation to life insurance during the past ten years in this country?

Mr. BYERS: The same objection.

A. I know that the history of life insurance among fraternal organizations in the past ten years can be summed up in——
Q. My question would, perhaps, call for an answer of yes or no. I asked you if you knew.
A. Yes, I know.
Q. Will you please state your knowledge?

Mr. BYERS: The same objection.

A. I think that the history of fraternal organizations in this country during the past ten years can be expressed in the sentence
908 that it has been one continual fight against the in-roads of mortality; that they are unable to furnish the insurance at the rates which they propose to do, and that in consequence they are either compelled to go out of business or to increase their rates.
Q. Can you state approximately, and keep it within safe figures how many fraternal societies furnishing life insurance have ceased to do business in this country in the last ten years?

Mr. BYERS: The same objection.

A. I am ashamed to state it, it is so large. It must be 2,000 fraternities of all kinds.
Q. Of the larger and stronger fraternal societies you have mentioned now doing business do you know whether or not any of these fraternal societies have taken any steps toward modifying their plan of insurance? That you can answer by yes or no.

Mr. BYERS: The same objection.

A. They have.
Q. You may state what you know concerning that matter.

Mr. BYERS: The same objection.

A. I know that the American Legion of Honor was compelled to reduce its certificate from $5000 to $2000. I know that the Royal Arcanum has been modifying its premiums. I know that the Woodmen have. In fact, all of them have been compelled to modify their premiums or go out of business.
Q. How do you mean by modify them?
A. Increase them.

Q. Have they changed the basis of making their assessments? Is that what you mean? Or simply increasing them as the mortality increased?

Mr. Byers: The same objection.

A. They have attempted to base them on more scientific
909 plans employing these tables as a basis.

Q. These tables of mortality that you have referred to?

A. Yes, sir.

Mr. Byers: There is no cross-examination.

Q. There is another question I would like to ask, Mr. Wolfe. Are you familiar with the form and character of the so-called lien notes which the Minnesota Mutual Life Insurance Company in transferring its insurance from the mortuary assessment to the guaranteed option or stipulated premium plan has taken?

A. Yes, sir. I am.

Q. Will you describe that lien and the basis for it?

Mr. Byers: Objected to as not the best evidence; the lien note is the best evidence.

A. This lien was created to enable a policy-holder to change from his unsatisfactory, increasing premium policy, to a level premium contract, without the necessity and burden of putting up the reserve value or difference in premiums as the case may be between the two contracts in cash. The insurance department recognized the fact that a loan upon a policy holder's contract as collateral is as good an investment as the company can make, and since the Minnesota Mutual maintained a reserve upon each contract that it exchanges equal to or in excess of this lien they are perfectly good assets.

Mr. Byers: I move to strike out the answer as not responsive to the question.

Q. You say that the lien was charged against the policy——

Mr. Byers: I want to make another objection; that it is stating a legal conclusion on the part of the witness.

Q. —was charged against the policy to enable the mem-
910 ber to exchange his assessment insurance for the stipulated or level premium insurance without putting up the reserve or paying over the amount of reserve in cash. On what theory would there be any reserve required for the policy?

Mr. Byers: Objected to as incompetent, irrelevant and immaterial.

A. Only upon the theory that the contract had been a legal reserve one from its inception.

Q. And what about the premium rate?

Mr. Byers: The same objection.

A. And that the premium rate had been likewise a level one from its inception.

Q. And the member having the advantage under his new contract of a premium rate based, not on his then attained age, but on his age on entry?

Mr. Byers: The same objection, and leading.

A. Yes, sir.

Q. How are these liens which you have described and liens which do not exceed the reserve charges required to be held for the policy; liens which have been created with the express written consent of the member, treated in this country by actuaries in general, as an asset or otherwise?

Mr. Byers: That question is objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness, and assuming a state of facts that has not been shown to exist.

A. I can best answer that question by saying that every insurance department in the country, with the exception of one,
911 has accepted them as good assets.

Q. That answer is what I want, only it — not responsive to my question. I will withdraw my question.

Mr. Byers: I insist that the question stand, and the answer, subject to the objection.

Mr. Palmer: I withdraw the question for the present and ask the witness how the insurance departments throughout the United States treat these liens. Do they treat them as an asset or not?

Mr. Byers: The same objection.

A. They do. They recognize them as good assets, with the exception of one department.

Q. What department is that?

A. That is the insurance department of the Commonwealth of Massachusetts.

Q. And to what extent do they treat them as an asset?

Mr. Byers: The same objection.

A. They adopt the peculiar rule there of considering them an offset to the face of the policy instead of the reserve.

Q. I didn't mean in Massachusetts. The answer you give now is how they treat them in Massachusetts?

A. Yes.

Q. But I mean in the other departments, with the exception of Massachusetts. To what extent do they treat them as an asset?

Mr. Byers: The same objection.

A. To the extent of the reserve which is carried by the companies' liability on that policy.

Q. In other words, to the amount of the lien, provided it does not exceed the amount of the reserve that is required to be held?

Mr. BYERS: The same objection.

A. Yes, sir.

912 Q. There are two or three questions I should have asked you at the outset. In the performance of your duties as consulting actuary state whether or not it is in the direct line of them to make computations of premium rates of various kinds based on the two tables of mortality that you have mentioned in your testimony?

A. Most certainly.

Q. And surrender values of policies?

A. Yes, sir.

Q. Reserve liability?

A. Yes, sir.

No cross-examination.

913 TABLE No. X.

Actuaries' or Combined Experience Table of Mortality.

Age.	Number living.	Number dying.	Logarithm, number living.	Logarithm, number dying.	Logarithm, probability of dying.	Yearly probability.	Expectation of life.
10	100,000	676	5.0000000	2.8299467	7.8299467	.006760	48.36
11	99,324	674	4.9970542	2.8286599	7.8316057	.006786	47.68
12	98,650	672	4.9940971	2.8273693	7.8332722	.006812	47.01
13	97,978	671	4.9911286	2.8267225	7.8355939	.006848	46.33
14	97,307	671	4.9881441	2.8267225	7.8385784	.006896	45.64
15	96,636	671	4.9851389	2.8267225	7.8415836	.006943	44.96
16	95,965	672	4.9821129	2.8273693	7.8452564	.007003	44.27
17	95,293	673	4.9790610	2.8280151	7.8489541	.007062	43.58
18	94,620	675	4.9759829	2.8293038	7.8533209	.007134	42.88
19	93,945	677	4.9728737	2.8305887	7.8577150	.007206	42.19
20	93,268	680	4.9697327	2.8325089	7.8627762	.007291	41.49
21	92,588	683	4.9665547	2.8344207	7.8678660	.007377	40.79
22	91,905	686	4.9633391	2.8363241	7.8729850	.007464	40.09
23	91,219	690	4.9600853	2.8388491	7.8787638	.007564	39.39
24	90,529	694	4.9567877	2.8413595	7.8845718	.007666	38.68
25	89,385	698	4.9534456	2.8438554	7.8904098	.007770	37.98
26	89,137	703	4.9500580	2.8469553	7.8968973	.007887	37.27
27	88,434	708	4.9466193	2.8500333	7.9034140	.008006	36.56
28	87,726	714	4.9431283	2.8536982	7.9105699	.008139	35.86
29	87,012	720	4.9395792	2.8573325	7.9177533	.008275	35.15

Table No. X—Continued.

Age.	Number living.	Number dying.	Logarithm, number living.	Logarithm, number dying.	Logarithm, probability of dying.	Yearly probability.	Expectation of life.
30	86,292	727	4.9359705	2.8615344	7 9255639	.008425	34.43
31	85,565	734	4.9322962	2 8656961	7.9333999	.008878	33.72
32	84,831	742	4.9285546	2.8704039	7.9418493	.008747	33.01
33	84,089	750	4.9247392	2.8750613	7 9503221	.008919	32.30
34	83,339	758	4.9208483	2.8796 92	7.9588209	.009095	31.58
35	82,581	767	4.9168801	2.8847954	7.9679153	.009288	30.87
36	81,814	776	4.9128276	2.8898617	7.9770341	.009485	30.15
37	81,038	785	4.9086887	2.8948697	7 9861810	.009687	29.44
38	80,253	795	4.9044613	2.9003671	7.9959058	.009906	28.72
39	79,458	805	4.9001376	2.9057959	8.0056583	.010131	28.00
914							
40	78,653	815	4,8957153	2.9111576	8.0154423	.010362	27.28
41	77,838	826	4.8911917	2.9169800	8.0257883	.010612	26.56
42	77,012	839	4.8865584	2.9237620	8.0372036	.010894	25.84
43	76,173	857	4.8818011	2.9329808	8.0511797	.011251	25.12
44	75,316	881	4.8768872	2.9449759	8.0680887	.011697	24.40
45	74,435	909	4.8717772	2.9585639	8.867867	.012212	23.69
46	73,526	944	4.8664409	2.9749720	8.1085311	.012839	22.97
47	72,582	981	4 8608289	2.9916690	8.1308401	.013516	22.27
48	71,601	1,021	4.8549191	3.0090257	8.1541066	.014260	21.56
49	70,580	1,063	4.8486817	3.0265333	8.1778516	.015061	20.87
50	69,517	1,108	4.8420910	3.0445398	8.2024488	.015939	20.18
51	68,409	1,156	4.8351132	3.0629578	8.2278446	.016898	19.50
52	67,253	1,207	4.8277117	3.0817073	8.2539956	.017947	18.82
53	66,046	1,261	4.8198465	3.1007151	8.2808686	.019093	18.16
54	64,785	1,316	4.8114745	3.1192559	8.3077814	.020313	17.50
55	63,469	1,375	4.8025617	3.1383027	8.3357410	.021664	16.86
56	62,094	1,436	4.7930496	3 1571544	8.3641048	.023126	16.22
57	60.658	1,497	4 7828881	3.1752218	8.3923337	.024679	15.59
58	59,161	1,561	4 7720355	3.1934029	8.4213674	.026386	14.97
59	57,600	1,627	4.7604225	3.2113876	8.4509651	.028246	14.37
60	55,973	1,698	4.7479786	3.2299377	8.4819591	.030336	13.77
61	54,275	1,770	4,7345998	3.2479733	8.5133735	.032612	13.18
62	52,505	1,844	4.7202007	3,2657609	8,5455602	.035120	12.61
63	50,661	1,917	4,7046738	3,2826221	8,5779483	.037840	12.05
64	48,744	1,990	4,6879212	3,2988531	8,6109319	.040826	11.51
65	46,754	2,061	4,6698188	3,3140780	8,6442592	.044082	10.97
66	44,693	2,128	4,6502395	3,3279716	8,6777321	.047614	10.46
67	42,565	2,191	4,6290526	3,3406424	8,7115898	.051474	9.96
68	40,374	2,246	4,6061018	3,3514098	8.7453080	.055630	9.47
69	38,128	2,291	4,5812440	3,3600251	8.7787811	.060087	9.00
915							
70	35,837	2,327	4.5543316	3.3667964	8.8124648	.064933	8.54
71	33,510	2,351	4.5251744	3.3712526	8.8460782	.070158	8.10
72	31,159	2,362	4.4935835	3.3732799	8.8796964	.075805	7.67
73	28,797	2,358	4.4593472	3.3725438	8.9131966	.081883	7.26
74	26,439	2,339	4.4222350	3.3690302	8.9467852	.088468	6.86

Table No. X—Continued.

Age.	Number living.	Number dying.	Logarithm, number living.	Logarithm, number dying.	Logarithm, probability of dying.	Yearly probability.	Expectation of life.
75	24,100	2,303	4.3820170	3.3622939	8.9802769	.095560	6.48
76	21,797	2,249	4.3383967	3 3519895	9.0135928	.103179	6.11
77	19,548	2,179	4.2911025	3.3382572	9.0471549	.111469	5.76
78	17,369	2,092	4.2397748	3.3205617	9.0807869	.120444	5.42
79	15,277	1,987	4.1840381	3.2981979	9.1141598	.130065	5.09
80	13,290	1,866	4.1235250	3.2709116	9.1473866	.140406	4.78
81	11,424	1,730	4.0578182	3.2380461	9.1802279	.151436	4.48
82	9,694	1,582	3.9865030	3.1992065	9.2127035	.163194	4.18
83	8,112	1,427	3.9091279	3.1544240	9.2452961	.175912	3.90
84	6,685	1,268	3.8251014	3.1031193	9.2780179	.189678	3.63
85	5,417	1,111	3.7337588	3.0457141	9.3119553	.205095	3.36
86	4,306	958	3.6340740	2.9813655	9.3472915	.222480	3.10
87	3,348	811	3.5247854	2.9090209	9.3842355	.242234	2.84
88	2,537	673	3.4043205	2.8280151	9.4236946	.265274	2.59
89	1,864	545	3.2704459	2.7363965	9.4659506	.292382	2.35
90	1,319	427	3.1202448	2.6304279	9,5101831	.323730	2.11
91	892	322	2.9503649	2 5078559	9.5574910	.360987	1.89
92	570	231	2.7558749	2.3636120	9.6077371	.405263	1.67
93	339	155	2.5301997	2.1003317	9.6601320	.457227	1.47
94	184	95	2.2648178	1.9777236	9.7129058	.516304	1.28
95	89	52	1.9493900	1.7160033	9.7666133	.584270	1.12
96	37	24	1.5682017	1.3802112	9.8120095	.648649	.99
97	13	9	1.1139434	0.9542425	9.8402991	.692308	.89
98	4	3	0 6020600	0.4771213	9.8750613	.750000	.75
99	1	1	0.0000000	0.0000000	0.0000000	1.000000	.50

916 DEFENDANTS' EXHIBIT No. —.

TABLE No. LXX.

American Experience Table of Mortality.

Age.	Number living.	Number dying.	Logarithm, number living.	Logthm, number dying.	Log'thm, probability of dying.	Yearly prob'b'l'ty of dying.	Expect'cy of life.
10	100,000	749	5.0000000	2.8744818	7.8744818	.007490	48.72
11	99,251	746	4.9967349	2.8727388	7.8760039	.007516	48.08
12	98,505	743	4.9934583	2.8709888	7.8775305	.007543	47.45
13	97,762	740	4.9901701	2.8692317	7.8790616	.007569	46.80
14	97,022	737	4.9868702	2.8674675	7.8805973	.007596	46.16
15	96,285	735	4.9835586	2.8662873	7.8827287	.007634	45.50
16	95,550	732	4.9802307	2.8645111	7.8842804	.007661	44.85
17	94,818	729	4.9768908	2.8627275	7.8858367	.007688	44.19
18	94,089	727	4.9735389	2.8615344	7.8879955	.007727	43.53
19	93,362	725	4.9701701	2.8603380	7.8901679	.007765	42.87
20	92,637	723	4.9667845	2.8591383	7.8923538	.007805	42.20
21	91,914	722	4.9633817	2.8585372	7.8951555	.007855	41.53
22	91,192	721	4.9599567	2.8579353	7.8979756	.007906	40.85
23	90,471	720	4.9565094	2.8573325	7.9008231	.007958	40.17
24	89,751	719	4.9530393	2.8567289	7.9036896	.008011	39.49
25	89,032	718	4.9495461	2.8561244	7.9065783	.008065	38.81
26	88,314	718	4.9495461	2.8561244	7.9100948	.008130	38.12
27	87,596	718	4.9424843	2.8561244	7.9136401	.008197	37.43
28	86,878	718	4.9389098	2.8561244	7.9172146	.008264	36.73
29	86,160	719	4.9353057	2.8567289	7.9214232	.008345	36.03
30	85,441	720	4.9316663	2.8573325	7.9256662	.008427	35.33
31	84,721	721	4.9279911	2.8579353	7.9299442	.008510	34.63
32	84,000	723	4.9242793	2.8591383	7.9348590	.008607	33.92
33	83,277	726	4.9205251	2.8609366	7.9404115	.008718	33.21
34	82,551	729	4.9167223	2.8627275	7.9460052	.008831	32.50
35	81,822	732	4.9128701	2.8645111	7.9516410	.008946	31.78
36	81,090	737	4.9089673	2.8674675	7.9589002	.009089	31.07
37	80,353	742	4.9050021	2.8704039	7.9654018	.009234	30.35
38	79,611	749	4.9009731	2.8744818	7.9735087	.009408	29.62
39	78,862	756	4.8968678	2.8785218	7.9816540	.009586	28.90
917							
40	78,106	765	4.8926844	2.8836614	7.9909770	.009794	28.18
41	77,341	774	4.8884098	2.8887410	8.0003312	.010008	27.45
42	76,567	785	4.8840416	2.8948697	8.0108281	.010252	26.72
43	75,782	797	4.8795661	2.9014583	8.0218922	.010517	26.00
44	74,985	812	4.8749744	2.9095560	8.0345816	.010829	25.27
45	74,173	828	4.8702458	2.9180303	8.0477845	.011163	24.54
46	73,345	848	4.8653705	2.9283959	8.0630254	.011562	23.81
47	72,497	870	4.8603200	2.9395193	8.0791993	.012000	23.08
48	71,627	896	4.8550768	2.9523080	8.0972312	.012509	22.36
49	70,731	927	4.8496098	2.9670797	8.1174699	.013106	21.63

Table No. LXX—Continued.

Age.	Number living.	Number dying.	Logarithm, number living.	Log'thm, number dying.	Log'thm, probability of dying.	Yearly prob'b'l'ty of dying.	Expect'cy of life.
50	69,804	962	4.8438803	2.9831751	8.1392948	.013781	20.91
51	68,842	1001	4.8378535	3.0004341	8.1625806	.014541	20.20
52	67,841	1044	4.8314922	3.0187005	8.1872083	.015389	19.49
53	66,797	1091	4.8247570	3.0378248	8.2130678	.016333	18.79
54	65,700	1143	4.8176050	3.0580462	8.2404412	.017396	18.09
55	64,563	1199	4.8099837	3.0788192	8.2688355	.018571	17.40
56	63,364	1260	4.8018426	3.1003705	8.2985279	.019885	16.72
57	62,104	1325	4.7931196	3.1222159	8.3290963	.021335	16.05
58	60,779	1394	4.7837536	3.1442628	8.3605092	.022936	15.39
59	59,385	1468	4.7736768	3.1667261	8.3930493	.024720	14.74
60	57,917	1546	4.7628061	3.1892095	8.4264034	.026693	14.10
61	56,371	1628	4.7510557	3.2116544	8.4605987	.028880	13.47
62	54,743	1713	4.7383286	3.2337574	8.4954288	.031292	12.86
63	53,030	1800	4.7245216	3.2552725	8.5307509	.033943	12.26
64	51,230	1889	4.7095244	3.2762320	8.5667076	.036873	11.67
65	49,341	1980	4.6932079	3.2966652	8.6034573	.040129	11.10
66	47,361	2070	4.6754209	3.3159703	8.6405494	.043707	10.54
67	45,291	2158	4.6560119	3.3340514	8.6780395	.047647	10.00
68	43,133	2243	4.6348097	3.3508293	8.7160196	.052002	9.47
69	40,890	2321	4.6116171	3.3656751	8.7540580	.056762	8.97
70	38,569	2391	4.5862384	3.3785796	8.7923412	.061993	8.48
71	36,178	2448	4.5584446	3.3888114	8.8303668	.067665	8.00
72	33,730	2487	4.5280163	3.3956758	8.8676595	.073733	7.55
73	31,243	2505	4.4947527	3.3988077	8.9040550	.080178	7.11
74	28,738	2501	4.4584565	3.3981137	8.9396572	.087028	6.68
75	26,237	2476	4.4189142	3.3937506	8.9748364	.094371	6.27
76	23,761	2431	4.3758647	3.3857850	9.0099203	.102311	5.88
77	21,330	2369	4.3289909	3.3745651	9.0455742	.111064	5.49
78	18,961	2291	4.2778612	3.3600251	9.0821639	.120827	5.11
79	16,670	2196	4.2219356	3.3416323	9.1196967	.131734	4.74
80	14,474	2091	4.1605886	3.3203540	9.1597654	.144466	4.39
81	12,383	1964	4.0928259	3.2931415	9.2003156	.158605	4.05
82	10,419	1816	4.0178260	3.2591158	9.2412898	.174297	3.71
83	8,603	1,648	3.9346499	3.2169572	9.2823073	.191561	3.39
84	6,955	1,470	3.8422971	3.1673173	9.3250202	.211359	3.08
85	5,485	1,292	3.7391766	3.1112625	9.3720859	.235552	2.77
86	4,193	1,114	3.6225249	3.0468852	9.4243603	.265681	2.47
87	3,079	933	3.4884097	2.9698816	9.4814719	.303020	2.18
88	2,146	744	3.3316297	2.8715729	9.5399432	.346692	1.91
89	1,402	555	3.1467480	2.7442930	9.5975450	.395863	1.66
90	847	385	2.9278834	2.5854607	9.6575773	.454545	1.42
91	462	246	2.6646420	2.3909351	9.7262931	.532456	1.19
92	216	137	2.3344538	2.1367206	9.8022668	.634259	.98
93	79	58	1.8976271	1.7634280	9.8658009	.734177	.80
94	21	18	1.3222193	1.2552725	9.9330532	.857143	.64
95	3	3	0.4771213	0.4771213	0.0000000	1.000000	.50

919 DEFENDANTS' EXHIBIT No. —.

TABLE No. XVII.

Net Annual Premiums Per $1,000, *Combined Experience, Four Per Cent.*

Age.	Whole life.	Age.	Whole life.
20	12.95	46	30.08
21	13.27	47	31.39
22	13.61	48	32.77
23	13.96	49	34.23
24	14.33	50	35.78
25	14.72	51	37.42
26	15.13	52	39.15
27	15.56	53	41.00
28	16.01	54	42.95
29	16.48	55	45.03
30	16.97	56	47.23
31	17.49	57	49.57
32	18.04	58	52.07
33	18.62	59	54.72
34	19.23	60	57.56
35	19.87	61	60.57
36	20.54	62	63.78
37	21.26	63	67.20
38	22.02	64	70.84
39	22.82	65	74.72
40	23.68	66	78.85
41	24.59	67	83.24
42	25.55	68	87.91
43	26.58	69	92.89
44	27.68	70	98.20
45	28.85		

920 *Premiums for Whole Life Assurance Per* $1,000.

Combined experience.			Age.	American experience.		
3%.	3½%.	4%.		3%.	3½%.	4%.
14.73	13.79	12.95	20	14.41	13.48	12.67
16.65	15.63	14.72	25	16.11	15.10	14.21
19.05	17.96	16.97	30	18.28	17.19	16.21
22.10	20.93	19.87	35	21.08	19.91	18.84
26.05	24.81	23.68	40	24.75	23.50	22.35
31.33	30.04	28.85	45	29.67	28.35	27.12
38.35	37.02	35.78	50	36.36	34.99	33.70
49.67	46.31	45.03	55	45.54	44.13	42.79
60.25	58.87	57.56	60	58.27	56.83	55.45
77.45	76.06	74.72	65	76.11	74.65	73.25
101.00	99.57	98.20	70	101.33	99.84	98.39
133.52	132.04	130.61	75	137.24	135.67	134.13
179.24	177.65	176.10	80	193.31	191.57	189.87

921 DEFENDANTS' EXHIBIT No. —.

TABLE No. CXXVII.

Net Annual Premiums Per $1,000, *American Experience, Three Per Cent.*

Age.	Whole life.	Age.	Whole life.
20	14.41	46	30.84
21	14.72	47	32.09
22	15.04	48	33.43
23	15.38	49	34.85
24	15.74	50	36.36
25	16.11	51	37.97
26	16.51	52	39.68
27	16.92	53	41.51
28	17.35	54	43.46
29	17.81	55	45.54
30	18.28	56	47.76
31	18.79	57	50.13
32	19.32	58	52.66
33	19.87	59	55.37
34	20.46	60	58.27
35	21.08	61	61.36
36	21.74	62	64.68
37	22.43	63	68.23
38	23.16	64	72.04
39	23.93	65	76.11
40	24.75	66	80.48
41	25.62	67	85.17
42	26.54	68	90.19
43	27.52	69	95.57
44	28.56	70	101.33
45	29.67		

922 DEFENDANTS' EXHIBIT NO. —.

TABLE NO. CXII.

Net Annual Premiums Per $1,000, *American Experience, Three and One-half Per Cent.*

Age.	Whole life.	Age.	Whole life.
20	13.48	46	29.51
21	13.77	47	30.75
22	14.08	48	32.07
23	14.41	49	33.48
24	14.75	50	34.99
25	15.10	51	36.59
26	15.48	52	39.29
27	15.88	53	40.11
28	16.29	54	42.06
29	16.73	55	44.13
30	17.09	56	46.34
31	17.68	57	48.71
32	18.19	58	51.23
33	18.73	59	53.94
34	19.30	60	56.83
35	19.31	61	59.92
36	20.55	62	63.23
37	21.22	63	66.78
38	21.94	64	70.58
39	22.70	65	74.65
40	23.50	66	79.02
41	24.56	67	83.70
42	25.26	68	88.71
43	26.23	69	94.08
44	27.26	70	99.84
45	28.35		

923 DEFENDANTS' EXHIBIT No. —.

TABLE No. XCI.

Net Annual Premiums Per $1,000, *American Experience, Four Per Cent.*

Age.	Whole life.	Age.	Whole life.
20	12.67	46	28.27
21	12.95	47	29.50
22	13.24	48	30.81
23	13.55	49	32.21
24	13.87	50	33.70
25	14.21	51	35.29
26	14.57	52	36.98
27	14.95	53	38.79
28	15.35	54	40.73
29	15.77	55	42.79
30	16.21	56	45.00
31	16.68	57	47.35
32	17.18	58	49.87
33	17.70	59	52.57
34	18.25	60	55.45
35	18.84	61	58.54
36	19.46	62	61.84
37	20.12	63	65.38
38	20.82	64	69.18
39	21.57	65	73.25
40	22.35	66	77.61
41	23.19	67	82.28
42	24.08	68	87.29
43	25.03	69	92.65
44	26.04	70	98.39
45	27.12		

924 UNITED STATES OF AMERICA, } ss:
District of Minnesota, City of St. Paul, }

I hereby certify that in accordance with the order appointing me additional examiner herein I was attended by counsel for the respective parties in the cause of J. C. Iversen, *et al. vs.* Minnesota Mutual Life Insurance Company *et al.*, on the 17th day of May A. D. 1902, in the city of St. Paul, county of Ramsey and State of Minnesota, in said division and district, and did then and there at said time and place, take and report the testimony of *the* S. Herbert Wolfe a witness produced on behalf of the defendants. That said witness being of lawful age, before testifying was by me duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth relative to the matters in controversy in this cause. That the report to which this certificate is attached, consisting of pages 1 to 53 inclusive contains a true, full and complete record of all the testimony taken, exhibits introduced and proceedings had at such time on behalf of the defendants.

L. B. TROTT,
Additional Examiner.

Filed June 4th, 1902.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy.*

925 (Endorsed:) Defendants' Record vol. 2. Filed August 4th 1902. Henry D. Lang, clerk, by Louise B. Trott, deputy.

In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Complainants, and ESDRAS B. Trubey, Intervening Plaintiff,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

Notice of Taking Depositions.

To the above named plaintiffs and their solicitors and counsel, Messrs. Dillon & Goetz and John F. Byers:

You will please take notice that the depositions and testimony of John F. Burke, Samuel Wright, J. C. Iverson, A. R. Choates, Charles M. Scanlon, W. R. Knell, Henry Kuenzli, Alois G. Bodden, Al B.

Geilfuss, Frank R. Larkin, W. C. Milbrath, Frank Harbach,
926 Francis Bloodgood and Charles McAnderson, residing in the county of Milwaukee and State of Wisconsin, and John Brehm, Jr., residing in the county of Waukesha, and Milton C. Phillips, residing in the county of Winnebago, all of which named presons reside more than one hundred (100) miles from the place of trial of the above entitled action, and whose testimony is wanted on behalf of the defendants in the above entitled cause, will be taken on behalf of said defendants by and before Henry D. Goodwin, a notary public and commissioner duly appointed to take testimony, at his office 126 New Insurance building in the city of Milwaukee and State of Wisconsin, on Saturday the 3rd day of May, 1902, at ten (10) o'clock in the forenoon, and the taking of said depositions will be adjourned from day to day until completed.

Dated St Paul, Minnesota, April 25, 1902.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

Endorsed as follows: Original. Circuit court of the U. S. district of Minnesota. Third division. J. C. Iverson *et al. vs.*
927 Minnesota Mutual Life Ins. Co. *et al.* Notice of taking depositions.

Service of the within notice is hereby admitted this 26th day of April, 1902.

JOHN F. BYERS,
Plaintiffs' Counsel.

HOW, TAYLOR & MITCHELL,
Defendants' Attorneys, St. Paul, Minn.

928 United States Circuit Court for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs,
vs.
MINNESOTA MUTUAL LIFE INSURANCE COMPANY and Others, Defendants.

Notice of Taking Testimony.

To Messrs. John F. Byers, Dillon and Goetz, solicitors *and* plaintiffs:

You will please take notice that the testimony and depositions of Matthews Scharel and J. S. Tomkiewitz, who reside in the city of Milwaukee and State of Wisconsin, and more than 100 miles from the place of trial of the above entitled action will be taken before Henry D. Goodwin, a commissioner duly appointed to take testimony at his office, 126 New Insurance bldg. in the city of Milwaukee and State of Wisconsin on Saturday, the 3rd day of May,

1902, at 10 o'clock in the forenoon, for use at the trial of the above entitled cause on behalf of the defendants. The taking of said testimony may be adjourned from day to day until completed.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

929 Received a copy of above notice this 1st day of May, A. D. 1902.

DILLON & GOETZ.

930 *Commission.*

UNITED STATES OF AMERICA, }
District of Minnesota, Third Division, } ss:

In the Circuit Court of the United States for the District of Minnesota.

The President of the United States of America to Henry D. Goodwin, of the city of Milwaukee, in the State of Wisconsin, Greeting:

Know ye, that in confidence of your prudence and fidelity you have been appointed, and by these presents you are invested with full power and authority to examine John F. Burke, Samuel Wright, J. C. Iverson, Charles M. Scanlon, W. R. Knell, Henry Kuenzli, Alois G. Bodden, Al B. Geilfuss, Frank Harbach, and John Brehm, Jr., and such other witnesses as may be brought before you, on their respective corporal oaths as witnesses in a cause depending in the circuit court of the United States for the district
931 of Minnesota, third division, wherein J. C. Iverson, Samuel Wright and Esdras B. Trubey are plaintiffs, and The Minnesota Mutual Life Insurance Company and others are defendants, on the part of the defendants. The examination of said witnesses shall be conducted upon oral interrogatories and cross-interrogatories to be propounded to the respective witnesses by the solicitors of the respective parties to said cause; and you are hereby authorized and required to cause said witnesses to come before you at such time and place as you may therefor designate and appoint, and carefully to take their testimony under oath or affirmation of said witnesses by you in that behalf duly administered, and the same, when thus taken and signed and certified by you, together with this commission, you will return to the clerk of said court at St. Paul, Minnesota, with all convenient speed. Reasonable notice of the time and place of taking said testimony shall be given to the respective parties to said cause, or their solicitors or counsel.

Witness the Honorable Melville W. Fuller, Chief Justice of
932 the Supreme Court of the United States of America, this 25th day of April, A. D. 1902.

Issued at my office in the city of St. Paul under the seal of said circuit court the day and year last aforesaid.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

Seal reads as follows:

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HOW, TAYLOR & MITCHELL,
Defendants' Solicitors.

Endorsed as follows: Original. Circuit court of the U. S. district of Minnesota. Third division. J. C. Iverson *et al. vs.* Minnesota Mutual Life Ins. Co., *et al.* Commission to Henry D. Goodwin.

933 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Complainants, and ESDRAS B. Trubey, Intervening Plaintiff,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingstone, Kenneth Clark, Albert H. Lindeke, and J. F. R. Fos:, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

Depositions of certain witnesses hereinafter named, taken before Henry D. Goodwin, a notary public duly commissioned and qualified for the county of Milwaukee and State of Wisconsin, and duly authorized to administer oaths, and a commissioner duly appointed to take testimony in the above entitled cause
934 taken before said notary and commissioner pursuant to the commission and notices hereto annexed, commenced at the office of said Henry D. Goodwin, 126 New Insurance building in the city of Milwaukee and State of Wisconsin, commencing on Saturday, the 3d day of May, 1902, at 10 o'clock in the forenoon, Messrs. Dillon & Goetz appearing on behalf of complainants, and Messrs. William D. Mitchell, Timothy R. Palmer, and John F. Burke appearing on behalf of defendants.

CHARLES M. SCANLON being first duly cautioned and sworn testified as follows:

Examined by Mr. MITCHELL:

Q. 1. What is your name?
A. Charles M. Scanlon.

Q. 2. Where do you reside?
A. In the city of Milwaukee.
Q. 3. What is your occupation?
A. I am a lawyer.
Q. 4. Where is your office, Mr. Scanlon?
A. 108 Grand avenue, in the city of Milwaukee, Wisconsin.
Q. 5. How long have you been a resident of this city?
A. Since May, 1889.

935 Q. 6. I will call your attention to paper marked Defendants' Exhibit 23, which purports to be an envelope under the letterhead of Dillon & Goetz, postmarked Chicago and addressed to Mr. Charles Scanlon, lawyer, Milwaukee, Wis., and ask you if you have ever seen that paper before?

Objected to by Mr. Dillon as incompetent, irrelevant and immaterial and inadmissable under the pleadings.

A. Yes sir.
Q. 7. Did you ever have that paper in your possession?

Same objection.

A. I did.
Q. 8. How did it come to you?

Same objection.

A. Through the mail.
Q. 9. Where was it received by you?

Same objection.

A. At my office.
Q. 10. Was there anything enclosed in that envelope?

Same objection.

A. Yes.
Q. 11. State what was enclosed.

936 Same objection and also that these questions are leading.

A. This letter.

(Referring to Defendants' Exhibit 24.)

I am quite sure that this was enclosed.

(Referring to Defendants' Exhibit 25.)

Q. 12. Can you state about what date you received these papers through the mail?

Same objections.

A. About October 25th, 1901.
Q. 13. Are you a member of the Minnesota Mutual Life Insur-

ance Company of St. Paul, Minnesota, formerly the Bankers Life Association of Minnesota?

A. I hold a policy in the company.

Q. 14. How long have you been a member?

Same objections.

A. Since the 6th day of August, 1896.

Mr. MITCHELL: I offer in evidence Defendants' Exhibits 23, 24 and 25.

Objected to as being incompetent, irrelevant and immaterial, impertinent and not admissable under the pleadings in the
937 case.

They are as follows:

938 DEFENDANTS' EXHIBIT 23. H. D. G., Notary.

Envelope reading as follows:

Return in 5 days to Dillon & Goetz, attorneys, Masonic temple, Chicago.

Chicago, Ill.,
Oct. 25,
3:30 p. m.,
1901.

8c.

Mr. CHAS. SCANLAN,
Lawyer,
Milwaukee,
Wis.

On back: Milwaukee, Wis., Oct. 25, 1901, 8 p. m.

939 DEFENDANTS' EXHIBIT 24. H. D. G., Notary.

MILWAUKEE, WIS., *Oct.* 12, 1901.

To the members of the Minnesota Mutual Life Ins. Co., formerly the Bankers Life Association of Minnesota.

DEAR SIRS: At the instigation and request of a great many policy holders we have brought suit in the United States circuit court at St. Paul, Minn., against the above named company on behalf of ourselves and all others who will join us asking for the appointment of a receiver to wind up its affairs according to law, on the grounds of gross and fraudulent mismanagement in changing its plans and perverting its funds. This was deemed the only means by which our mutual interests therein could be in the least degree preserved.

Whether your policy is in force at the present time or not you are proportionately interested with us in the proper distribution of its funds yet remaining and hence we ask your co-operation.

Please, therefore sign the enclosed slip authorizing our at-
940 torneys, Dillon & Goetz, Masonic temple, Chicago, Ill., and our counsel, John F. Byers, Lumber Exchange building, Minneapolis, Minn., to represent you that your interests may be equally protected with our own and mail same at once to attorneys or counselor as per addresses above given.

Trusting you will act promptly in this matter as it is of utmost importance, we remain,

Yours truly,

J. C. IVERSON.
SAMUEL WRIGHT.

941 DEFENDANTS' EXHIBIT 25. H. D. G., Notary.

OCTOBER —, 1901.

To Dillon & Goetz and John F. Byers:

I hereby authorize you to join*d* me in the suit now pending against the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota, to obtain the relief necessary for the protection of my rights as a member of the Bankers Life Association of Minnesota under certificate No. — issued on the — day of —— A. D., 1— for $—.

(Signed) —— ——.

Over

On the back: Costs, expenses and attorneys fees to be paid out of proceeds *pro rata* by order of court, otherwise you are only to be liable for your share of costs and expenses not to exceed three dollars.

942 Cross-examination.

By Mr. DILLON:

X Q. 15. Have you ever changed your certificate from the old assessment plan, the kind you took in 1896, to any other plan?

Objected to as incompetent, irrelevant, immaterial and not proper cross-examination.

A. I changed one.

X Q. 16. When was that?

Objected to as not proper cross-examination.

A. On the 20th of December, 1900.

X Q. 17. How many certificates have you?

Objected to as not proper cross-examination.

A. That is the only one that I hold in that company at present.

X Q. 18. That is under what is called the new guaranteed option policy plan, is it Mr. Scanlon?

Objected to as not proper cross-examination.

A. I really have not looked at it for so long that I could not tell you without looking it over to see what the plan of it is.

(Witness examines policy)

WITNESS: This is the guaranteed option policy.

943 X Q. 19. The new guaranteed option policy, is it not?

Same objection.

A. Yes.

944 JOHN BREHM JR. being first duly cautioned and sworn testified as follows:

Examined by Mr. MITCHELL:

Q. 20. What is your name?
A. John Brehm Jr.
Q. 21. Where do you reside?
A. In the city of Waukesha, Wisconsin.
Q. 22. What is your occupation?
A. Merchant.
Q. 23. Have you ever sat on a grand jury of the United States court in the eastern district of Wisconsin?

Objected to as immaterial, incompetent, irrelevant and impertinent and inadmissable under the issues in the pleadings, and as leading.

A. Yes.
Q. 24. In what court?

Same objections, also as not being the best evidence.

A. United States court.
Q. 25. In what city did that grand jury sit?

Same objections.

A. City of Milwaukee.

945 Q. 26. State if you can, the date of that sitting.

Same objections.

A. I have not any way of stating except from the records—I have the dates in the records here.

Q. 27. Mr. Brehm, did you make any memoranda or notes of the transactions of that grand jury at the time that the grand jury sat?

Same objections.

A. I did.

Q. 28. In what form were those memoranda made?

Same objections.

A. As secretary.

Q. 29. Were you the secretary of the grand jury?

Same objections.

A. I was.

Q. 30. Did you make any memoranda or notes of the transactions of that grand jury as secretary?

Same objections.

A. I did.

Q. Were those notes reduced to writing by you?

A. Yes sir.

946 Q. 32. State whether those notes as reduced to writing at that time were a correct statement of the transactions of that grand jury?

Same objections.

A. I have the original writings as I took them at the time—as near as I could get them at the time—I am not a shorthand reporter and I simply took them as near as I could as they were given.

Q. 33. Have you those minutes before you?

Same objections.

A. I have.

Q. 34. I will ask you to refresh your recollections from those minutes, and then after you refresh your recollections if you have an independent recollection of the date that that grand jury was in session, to state the date.

Same objections.

A. It was convened March 20th, 1899.

Q. 35. State if you know whether any proceedings were had by that grand jury against the Bankers Life Association of St. Paul or any of its officers or trustees.

Same objections.

A. Yes, sir.

947 Q. 36. What was the nature of those proceedings generally?

Same objections.

A. In the case of the United States against Bankers Life Insur-

ance Company of St. Paul Minnesota, violation of No. 5480, fraudulent use of mail.

Mr. DILLON: I would like to have it noted that the witness is reading from his minutes made as secretary at the time and I move that his answer be stricken out as not being the best evidence.

Mr. MITCHELL:

Q. 37. Were those proceedings criminal or civil?

Same objections.

A. Criminal.

Q. 38. Did that grand jury return any indictment against any of the officers or trustees of the Bankers Life Association of St. Paul, Minnesota?

Objected to as immaterial, incompetent, irrelevant, inadmissable under the pleadings and not the best evidence and *ex parte*.

A. I am not posted on this whether I am authorized to give away the details of this memorandum that I have of that proceeding before the grand jury.

948 Mr. DILLON: You are not obliged to disclose it.

Mr. MITCHELL (to Mr. Dillon): Are you the court here?

Mr. DILLON: He asked for instruction and I am competent to give it.

Mr. MITCHELL: There is no objection to a member of a grand jury subpœnaed as a witness in a cause, testifying in regard to transactions before him.

WITNESS: I would like instructions on it, whether I am supposed to or not—I do not know—I am ignorant as to that and if I am instructed to give the proceedings of which I have a memorandum here, I am willing to do so. If not, I am not willing, unless I am allowed to—that is all.

Mr. MITCHELL: There is no question about it.

Mr. DILLON: The witness is privileged and it is his duty to keep the matter secret, as far as the public is concerned.

Q. 39. Question repeated. What is your answer to the question?

Same objections.

A. I will answer that we did find an indictment.

Q. 40. State, if you know, what witnesses appeared before the grand jury at that time and gave testimony in the matter of
949 this indictment against the Bankers Life—I do not care for the names of all the witnesses, but I do not want to ask any leading questions.

Objected to as incompetent, irrelevant, immaterial and inadmissable under the pleadings of this case, also as being a privileged communication.

A. Well, I supposed that I would get instructions from the court here as to whether I would answer these questions or not—I want to answer them if the court instructs me to answer them, otherwise I would not like to answer them without instruction from the court.

Q. 41. Do you decline to answer the question?

A. I do until I receive instructions from the court, yes sir.

(Witness was then excused in order that he might consult a judge of the United States court before making answer to question 40 and similar questions, and was handed a brief on the subject, by Mr. Mitchell and was excused for the present.)

JOHN BREHM, JR.

950 WILLIAM R. KNELL being first duly cautioned and sworn testified as follows:

Examined by Mr. MITCHELL:

Q. 42. What is your name?

A. William R. Knell.

Q. 43. Where do you reside?

A. Milwaukee.

Q. 44. What is your occupation?

A. I am at present deputy tax commissioner of the city of Milwaukee.

Q. 45. Are you a member and policy holder of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly the Bankers Life Association of St. Paul, Minnesota?

A. I am.

Q. Did you ever receive any communications, oral or written, in regard to any suit that was pending or about to be commenced against this company?

Objected to as incompetent, irrelevant and immaterial and not admissable under the pleadings in the case.

951 A. I received a letter from a firm of attorneys in Chicago, Dillon & Goetz I think by name, some time ago—I think it was in the fall of 1901, asking me to join others in an action against the Bankers Life Association, and I think the purport was to put them out of business, that they had no right to do business the way they do, something like that—I looked for that letter but I could not find it, but I have a reply I got later though.

Motion made by complainants' counsel to strike the answer out as not responsive.

Q. 47. You say you searched for that letter?

Same objections and also as leading.

A. I did.

Q. 48. Did you examine all your records and your letter files?

Same objections.

A. I examined everything that I have got down in the office, but I think I have got that letter at home. I wrote the gentlemen and then I received this letter in reply.

(Producing a letter.)
Same objections and motion.

WITNESS: That I found down in the office.

Same objections and motion.

952 Letter produced by witness marked Defendants' Exhibit 26.

Letter last mentioned by witness as having been received by Dillon & Goetz and marked Exhibit 26, is offered in evidence.

Objected to as incompetent, irrelevant and immaterial inadmissable under the pleadings and no foundation laid.

The letter is as follows:

953 DEFENDANTS' EXHIBIT 26. H. D. G., Notary.

Walter S. Dillon. Albert Goetz.

Dillon & Goetz, attorneys and counselors, Masonic Temple, suite 1510.

Telephone central 3381.

CHICAGO, ILLS., *Nov.* 3*d*, '01.

Hon. Wm. R. Knell, dep. tax com'r, Milwaukee, Wis.

DEAR SIR: Replying to your favor of the 30th ultimo, we beg leave to say, that from the tenor of your letter it appears to us that you have been led into exchanging your original certificate in the Bankers' Life Association of St. Paul, Minn. Assuming that such is the case, we fear, that, as we represent only the members who refused to exchange, we are unable to serve you, further than to give you the legal connection in relation thereto, between the facts in your possession.

954 In consenting to the exchange as aforesaid, you were released, as a consideration to you, from paying assessments on account of death losses among the members who refused to surrender their certificates; and as a further consideration to you, to make the exchange, you were repaid, with large interest, the amount of your original deposit in the guaranty trust fund of the Co.; which deposit you pledged in that fund to secure the other members against any default by you in the payment of assessments made against you; the company being entirely co-operative. Such release and repayment to you was a wrong to the remaining members re-

fusing to exchange their certificates; and as you consented to this wrong, you are, of course, estopped to complain thereof. Hoping the matter is now clear to you, we are

Yours truly, DILLON & GOETZ.

955 Q. 49. Did any person come to see you about this case?

Same objections.

A. There was a party came to see me prior to getting these letters, by the name of Carter, who styled himself an insurance mathematician. He tried to induce me to join a large number of others. I told him at that time that I did not think I wanted to get tangled up, that I had a policy in the company and I thought the company was good, that I had not the time to study the intricacies of life insurance and had to rely a good deal upon what a man whom I thought competent, told me, and I finally asked him why he was taking such great interest in my insurance—I asked him whether it was because he loved me or because he loved my money, and then he dug out.

Motion made by complainants' counsel that the answer be stricken out as not responsive to the question, and also for the reason that it is hearsay evidence.

Q. 50. You state that he asked you to join with a number of other policy holders?

Same objections, and also as leading.

A. Yes.

956 Q. 51. Join in what?

Same objections.

A. Join in an action to be brought to prevent this company from changing its plan, or punish them by way of putting them out of business because they did change their plan.

Motion made by complainants' counsel that the answer be stricken out as being *ex parte* evidence and as not being responsive.

Q. 52. Can you state approximately the date of this interview?

Same objections.

A. No.

Q. 53. In what year was it?

Same objections.

A. Oh, it must have been late in 1900 or early in 1901—I would not attempt to state even approximately what date it was.

Q. 54. Was the firm of Dillon & Goetz mentioned at that conversation?

Same objections.

A. I don't remember whether that firm was mentioned or not—the first recollection I have of that firm was when I received that letter.

957 Cross-examination.

By Mr. DILLON:

X Q. 55. You at one time had what is called a certificate on the assessment plan, is that right?

Objected to as not proper cross-examination.

A. Yes.

X Q. 56. You state that you are a member of this Minnesota Mutual Life Insurance Company?

Same objection.

A. Yes.

X Q. 57. When did you become a member?

Same objection.

A. Well, I could not give the date of that, but I can pretty near—I was at that time in the register of deeds office in the court house, and I was there from 1888 to 1892, and it was I think, about 1890.

X Q. 58. You had a certificate then under what is known as the assessment plan?

Objected to as not proper cross-examination.

A. Yes sir, three certificates.

X Q. 59. And you afterwards exchanged them, did you?

958 Objected to as not proper cross-examination.

A. Yes.

X Q. 60. You changed those to what is called the new guaranty option policy?

Same objection.

A. Well, their new certificate.

X Q. 61. When did you make the change?

Same objection.

A. I have paid the third premium on the new policies, so it must have been 3½ years ago.

X Q. 63. You do not remember exactly?

Same objection.

A. I don't remember exactly—only that I have paid the third premium and that was due last December.

X Q. 63–4. You were solicited by agents of the company to make that change, were you?

Objected to as not proper cross-examination.

A. I do not know whether it was done by an agent or whether it was done by correspondence—I would not be sure about that.

X Q. 65. You changed all three of those policies?

959 Same objection.

A. I merged the three into one policy.

X Q. 66. Same amount?

Same objection.

A. Yes.

WM. R. KNELL.

960 ALOIS G. BODDEN being first duly cautioned and sworn testified as follows:

Examined by Mr. MITCHELL:

Q. 67. What is your name?

A. Alois G. Bodden.

Q. 68. Where do you reside?

A. Milwaukee.

Q. 69. Are you now or have you ever been a member of the Bankers Life Association of St. Paul, Minnesota, now the Minnesota Mutual Life Insurance Company?

A. Well, I wanted to be but I refused the policies which were sent to me.

Q. 70. You have never been a member?

A. No, I never really was a member—that is, I paid a first premium and then demanded my premium back again.

(Papers produced and marked Defendants' Exhibit 27.)

Q. 71. I show you Defendants' Exhibit 27, which appears to be a certified copy of a complaint filed before the insurance commissioner of the State of Wisconsin, against the Bankers Life Association of St. Paul, Minnesota, in which one Alois G. Bodden
961 appears as the complaining party, and ask you to state if you were the person who signed that complaint and filed it with the commissioner.

Objected to as incompetent, irrelevant and immaterial impertinent, not admissable under the pleadings, and as being *ex parte*.

A. Yes, I signed a complaint—of course I don't know whether this is a copy of it or not—I could not say as to that.

Q. 72. Do you know Edmund D. Carter?

Same objections, also as leading.

A. Yes.

Q. 73. I will ask you to state who took charge of the prosecution of that complaint before the insurance commissioner on your behalf?

Same objections, and also as not the best evidence.

A. Well, I made complaint to Mr. Carter and afterwards to Mr. Bloodgood—the old gentleman, I don't know what his first name is—and I turned my claim over to Mr. Carter to make the proper complaint, whatever that was—I don't know.

Motion made by complainants' counsel that the part about his claim be stricken out as not being responsive to the question.

962 Q. 74. State whether or not you turned the prosecution of this complaint before the insurance commissioner over to Carter.

Objected to for the same reasons and also as leading.

A. Yes, I think I did.

Mr. MITCHELL: I offer in evidence Defendants' Exhibit 27.

Objected to as being immaterial, irrelevant, inadmissable under the pleadings and as *ex parte* evidence.

It is as follows:

963 DEFENDANTS' EXHIBIT 27. H. D. G., Notary.

Emil Giljohann, commissioner; R. T. Hazelwood, deputy com'r.

State of Wisconsin, office of commissioner of insurance, Madison, Wisconsin.

MAY 2, 1902.

I, R. T. Hazelwood, deputy commissioner of insurance of the State of Wisconsin do hereby certify that I have compared the hereunto attached copy of the complaint of Alois G. Bodden with the original on file in this department and that the same is a true and correct transcript therefrom and of the whole of said original.

In witness whereof I have hereunto set my hand and affixed the official seal, at the city of Madison, the day and year first above written.

[Seal of Insurance Department, State of Wis.]

R. T. HAZELWOOD,
Deputy Commissioner.

964 STATE OF WISCONSIN, } ss:
County of Milwaukee, }

To the honorable commissioner of insurance:

Personally appeared this, the 25th day of June, 1897, Alois G. Bodden, who states that he, at all of the times hereinafter referred to, or herein mentioned, was and still is a resident of the city of Milwaukee, county of Milwaukee, and State of Wisconsin; and vice-president of the Bodden Packing Company, a corporation engaged in the business of packing meats, and located in the city, county and State aforesaid; and who makes complaint to the honorable commissioner of insurance herein as follows, to-wit:

That whereas, on or about the 2nd day of November, 1895, the complainant herein received through the mails, an envelope at his place of business aforesaid, addressed to him containing printed advertisements, a circular letter, and blank form to be filled in, soliciting him, the complainant, to insure his life, in and with the Bankers' Life Association of St. Paul, Minnesota, which said advertisements stated effected insurance upon the lives of its members se-
965 cured by, (as per the following words copied from said advertisements) "the guaranty trust fund, which enables the company to discharge its contracts in full, whether members pay or fail to pay. So long as a member meets his own payments promptly he cannot suffer in consequence of the negligence of others for this fund will protect him." The circular letter contained in said envelope as aforesaid concludes with the statement in words as follows: to wit: "If you will fill in the enclosed blank and return it to us, we will give you on the reverse side a statement of the cost of insurance in this association." And complainant states that being impressed with, and misled and deceived by said statements contained in said advertisements, into believing that said association could and would effect insurance upon his, complainant's life, at a guaranteed maximum cost per annum, and that said insurance was guaranteed by said guaranty trust fund as stated in said advertisements, and being desirous of obtaining reliable insurance upon his life, filled in said blank form with his name, age, and residence, and amount of insurance desired, as requested
966 in said circular letter as aforesaid, and mailed the same forthwith, on or about the 2nd day of November, 1895, to the said Bankers' Life Association, at Saint Paul, Minnesota. And complainant states that thereafter, in answer to said blank form so sent as directed in said circular letter aforesaid, he was visited and called upon at his said place of business on the 5th day of November, 1895, by one Egbert W. Leonard, who introduced himself as the duly authorized agent of said Bankers' Life Association and represented and stated that complainant's impression and belief, received from the advertisements and circular letter sent to him, the complainant, as aforesaid, by said association, viz: that said Bankers'

Life Association of St. Paul, Minnesota, by reason of, and based upon its alleged adequate guaranty trust fund, could and would effect insurance upon his, complainant's life at an annual cost guaranteed not to exceed a specified amount, was correct, and that the guaranteed maximum cost per annum of a $1,000. insurance in the Banker's Life Assoeiation, as aforesaid, upon his, complainant's life would be $16.50 and that the estimated cost would be $11.50 per annum for $1,000. insurance upon his, complainant's life as aforesaid. And solely upon said representations made by said
967 Egbert W. Leonard, agent of said Bankers Life Association, as aforesaid, complainant then and there paid to said Leonard as aforesaid, sixty four dollars and thirty-five cents, for which complainant took a receipt from said Egbert W. Leonard as general agent of said Bankers' Life Association, and which sixty-four dollars and thirty-five cents, said Egbert W. Leonard represented was the amount of the cash entrance premium on $6,000. insurance on complainant's life in said association which complainant then and there applied for on an application supplied by said Egbert W. Leonard, as aforesaid.

Complainant further states that on or about the 12th day of November, 1895, he received at his address as aforesaid, an envelope addressed to him containing three policies of insurance, or membership certificates in the Banker's Life Association, of Saint Paul, Minnesota made out in his, complainant's name, each policy or membership certificate being for $2,000. and identical in form and terms, having printed upon each of them, in an obscure manner concealed in the folds thereof, the following words, towit: "Extract
968 article VI, "There shall be paid to such beneficiary as is designated in the membership certificate the sum of money in said certificate named, and if said assessment shall be insufficient to provide sufficient money to pay said death losses, then the board of trustees may make such further assessments on the members as may be necessary to provide sufficient money to pay said death losses." Upon reading this statement printed upon each of said policies or membership certificates, as aforesaid and discovering therefrom that the cost of said insurance per annum in said Bankers Life Association of St. Paul Minnesota, as purchased by complainant as aforesaid, was not guaranteed as bargained for with, and represented to be by said Egbert W. Leonard, the agent of said association as aforesaid, complainant immediately wrote to said association refusing to accept said policies, or certificates of membership, and demanded the return of the money paid to the said agent of said association as aforesaid, or the guaranteed policies as purchased and bargained for by complainant as herein set forth. Complainant states that said Banker's Life Association has re-
969 fused and neglected to return the money so paid to its agent as aforesaid, or to make good the guarantees as given by its agent Egbert W. Leonard as herein stated, and as stated in its advertisements as herein set forth; and has ever since refused and

neglected to return said money so fraud-ently obtained, or to make good its said agent's guarantees, notwithstanding the facts hereinbefore set forth have been made known to said association, and that its said agent Egbert W. Leonard has admitted in the presence of witnesses, (a stenographic report of which admission has been sworn to) that he did guarantee the cost of said insurance not to exceed $16.50 per $1,000 per annum, but that he meant the guarantee as his guarantee personally.

Complainant further states that he is reliably informed and believes, that said Banker's Life Association of St. Paul, Minnesota, is a corporaiton duly organized and existing under and by the laws of the State of Minnesota as a co-operative or assessment association, and that it has no authority
970 to guarantee that the yearly cost of insurance therein per $1,000. shall not exceed a fixed amount; and that said Bankers Life Association is an unsafe and mismanaged affair, inasmuch as it is issuing policy contracts or membership certificates, to persons duped into becoming members of said association, stipulating the payment of a fixed sum of money in event of death, whereas the articles of incorporation of said association specify in article twelve thereof, the amounts that shall be paid to the beneficiaries or deceased members as follows, viz:—"Upon the death of each member of this company, his family shall receive therefrom 1st, the whole amount pledged thereto by the deceased. 2nd, a sum equal to two per. cent. of the then subsisting guaranty trust fund, not exceeding however, two thousand dollars for each full membership, one thousand dollars for each half membership held by the deceased, and in force at the time of his death, and not exceeding six thousand dollars in any case. Such amounts shall be paid as soon as practicable, and in all cases within sixty days after due proof of such death, and such payments shall be made to the family of the deceased only upon the receipt of such person or persons for them as the deceased shall have designated therefor
971 in his original application, or thereafter under his hand and duly acknowledged and filed with the secretary of said company," which specification in said article 12, of the articles of incorporation of said association leaves the amounts payable thereunder indefinite and not fixed, thereby exp*em*ting surviving members from liability under any of the membership certificates of said association issued in accordance with said article 12, as aforesaid, should the guaranty trust fund therein mentioned, become exhausted, whereas the stipulation of a fixed sum of money to be paid in event of death of the holder of a certificate of membership, by said association, involves the surviving members, and entails the liability upon them for the amount of said certificates so fixed and determined, which stipulation in said certificates of membership by said association is unauthorized by said article 12 of the articles of incorporation, as herein set forth, and is in excess of the prerogatives conferred upon the officers and trustees of said Banker's Life Association of St.

Paul, Minnesota, in its articles of incorporation as aforesaid.
972 The liability of the surviving members for the amounts, or sums of money fixed and determined as specified in the membership certificates of said association as above set forth, is stated in such membership certificates, as required by the laws of the State of Wisconsin, by having printed on such policies or membership certificates what purports to be an extract from article VI, as hereinbefore set forth, in fine type, concealed in the folds of such policies or membership certificates, although the words or language of said purported "extract from article VI" nowhere appear in the articles of incorporation of said association as aforesaid or any of the amendments thereto, as filed with the secretary of state of Minnesota, and on record in the office of said secretary of state.

And inasmuch as that said association is retaining such residue funds as are found to be on hand at the close of each fiscal year of said association, in violation of articles 7 and 13 of said articles of incorporation of said association which said article 13 provides that "the fiscal year of this company shall commence on the first Monday of September in each year,"—and article 7 which pro-
973 vides that, "all membership fees and other contributions thereto (except assessments occasioned by the death of its members) shall be used to defray its current expenses, and to increase its efficiency; and the residue thereof, if any, shall be used to pay losses occasioned by the death of its members," notwithstanding the aggregate amount of said residue sums, as stated in the sworn report of the officers of the said association to the hon. commissioner of insurance herein dated Feb. 11th, 1897, now amounts to $175,131.67, and has increased to this comparatively immense sum from the amount of said sum of $53,256.13, over five years ago, an increase of 328 per cent. while the guarantee trust fund has increased in the same time from $266,785.14 to $591,509.76, an increase of only 222 per cent. in comparison therewith. A large part of which residue sums is deposited in the bank or banks owned or controlled in whole or in part by one of the trustees of said association which said trustee also receives a salary as trustee of said association in addition to the patronage given his bank. The amount deposited in said bank or banks as aforesaid is, as stated in
974 the sworn report of the officers of the said association to the honorable commissioner of insurance of the State of Wisconsin, dated Feb. 11, 1897, $131,946.26, and notwithstanding the existence of this comparatively immense sum, assessments, both mortuary and for expenses continue to be levied and exacted from the members of said association with almost unbroken regularity, while said residue sum of $175,131.67 continues to be kept on hand for the aggrandizement and profit of the officers and trustees of said association as aforesaid; and without an individual accounting to each member of said association for his *pro rata* share of said residue sum of $175,131.67, as is required by the laws of Wisconsin;

were the retention of said residue sum of $175,131.67 authorized by the articles of incorporation of said association as aforesaid.

See page 5, paragraph 3, of open letter of commissioner of insurance of the State of Wisconsin, addressed to "To whom it may concern" annexed to and forming part of this complaint as "Exhibit A."

Wherefore, complainant prays that the honorable commissioner of insurance take such action, in view of the facts herein set
975 forth as he may deem necessary and for all equitable and proper relief.

ALOIS G. BODDEN.

Subscribed and sworn to before me J. G. Aug. Winner, a notary public in and for the city of Milwaukee, county of Milwaukee, and State of Wisconsin, this the day and date first above written.

J. G. AUG. WINNER,
Notary Public, Milwaukee County, Wis.

976 EXHIBIT A.

Form 2.

Assessment Laws.

Opinions of the attorney general upon the provisions of the law governing mutual, beneficiary, and fraternal corporations, societies, orders, and associations providing insurance on the assessment plan.

State of Wisconsin, department of insurance.

MADISON, *May 15th*, 1897.

To whom it may concern:

The following decisions have been rendered by the attorney general upon the provisions of the law governing mutual, beneficiary, and fraternal corporations, societies, orders and associations providing insurance on the assessment plan, and the attention of all associations and organizations licensed under the provisions of
977 chapter 175, Laws of 1895, *are* hereby called to the same:

No. 1. "You inquire whether or not under the provisions of chapter 175, of the Laws of 1895, you may insist that the section in the by-laws of the associations mentioned in that act, and the clause in the policy of such associations defining and fixing the assessment liability of the policy holder, shall be definite and explicit, so that the policy holder may know that he is liable for an increase in rate or additional assessments, should the necessities of the association require the same for the payment of its claims.

Section 2 of the act which relates to domestic, fraternal or benefi-

ciary corporations, societies, orders or associations, for the relief of members or beneficiaries, furnishing life or casualty insurance or indemnity upon the mutual or assessment plan, expressly requires that you approve the constitution and by-laws of such domestic associations before you can issue the certificate authorizing them to engage in business in this State.

978 Section 5 of said chapter requires that foreign associations of the character mentioned, seeking to engage in business in this State, file with you an application for admission etc., together with a copy of its articles of incorporation, a copy of its constitution and by-laws, a copy of its medical examination blank if one is provided, and a copy of its certificate or policy issued to its members, etc.

Section 6 requires that you investigate the character and standing of all such foreign associations, applying for a license to do business in this State; and if approved by you, and if the conditions of section 4 have been complied with, that you shall notify such association of your approval, and after such association shall have appointed you its lawful attorney, that you may issue a license, etc.

Section 17 provides that copies of the literature of each corporation, society, order or association seeking a license or doing business in this State, shall be filed with the commissioner of insurance; and

979 if such literature is misleading in regard to the business of such corporation, or is in conflict with any law of this State, it shall not be entitled to a license or permitted to do business in this State."

The feature which distinguishes the class of associations or corporations provided for in said chapter 175 from all other insurance associations or corporations, is the assessment liability. In other words, that every member of such an association is liable either to an increase in rate or additional assessments, if the necessities of the association require the same for the payment of its claims.

In defining the word "assessment" as the term is used in chapter 175, section 16 of that chapter provides that it shall be held to mean "that the amount estimated or required for death losses and benefits shall not be limited to a fixed sum."

It seems to us very clear that you are not only authorized but required to pass upon the character and the literature of all

980 assessment associations provided for in said chapter; and that associations are not authorized to engage in business in this State without your approval. This of course does not mean that it is discretionary with you whether such associations shall be permitted to engage in business in this State. If they comply with all the conditions imposed upon such associations, you cannot of course, arbitrarily refuse to license them to engage in business. But in view of the authority conferred upon you as aforesaid, you certainly have the right to insist that so important a feature as that of the assessment liability of the policy holder, shall be definitely and explicitly stated in the by-laws and policies; so that the policy

holder may know that he is liable for an increase in rate or additional assessments if required for the payment of the claims of such associations."

No. 2. "We have had under consideration the following inquiry submitted by you, namely:—Do not the provisions of chapter 175 of the Laws of 1895, require that every order or association authorized and licensed to transact business in this State under the
981 provisions of said chapter, shall submit to the commissioner of insurance for approval, every amendment of its articles of incorporation, amendments to its by-laws and all new policy forms; and is not failure to so submit said amendments and policy forms sufficient cause for revocation of license.

Section 2 of said chapter 175 requires of domestic associations that they file with you before incorporation, copies of the articles of incorporation, by-laws, blank application for and certificate of membership, plan of business, etc. And further, that after incorporation you shall approve of the constitution and by-laws before authorizing them to engage in business in this State. In the action brought against yourself, in your capacity of commissioner of insurance, by the American Casualty Association of Milwaukee, Judge Johnson of the circuit court of Milwaukee county, recently decided that under the provisions of section 2 referred to, domestic corporations were required to submit to you amendments made to by-laws, etc., after such associations had been authorized to begin business.
982 We have no doubt that Judge Johnson decided correctly. It would be an idle ceremony to require such associations to submit to you for approval the papers referred to, if immediately thereafter such associations might amend and change such papers without your knowledge and approval.

Section 5 of said chapter 175 requires of foreign associations among other things that they file with you their application for admission, together with a copy of the articles of incorporation, a copy of the constitution and by-laws, a copy of the application, a copy of the medical examination blank if one is provided for, a copy of the certificate or policy issued to the members, etc. Section 6 of the same chapter requires that you shall investigate the character and standing of such associations, etc., before you are authorized to license them to engage in business in this State.

Chapter 175 is very crudely drawn. It does not in terms require that you must approve of the constitution and by-laws of foreign associations before issuing a license; and yet we think that this is the necessary inference to be drawn from the language used. We can conceive of no reason why the legislature should place
983 domestic corporations of this kind under more strict supervision than foreign corporations. It is certainly as necessary for the protection of policy holders residing in this State that you should approve the constitution, by-laws, policies, etc., of foreign associations, as it is that you should approve the like documents of domestic corporations. We are of the opinion that foreign associa-

tions as well as domestic associations are required to submit to you material amendments made with reference to their articles of incorporation, by-laws or policy forms; and if after notice they refuse so to do, that you would be authorized to revoke their license."

No. 3. "You ask, "Do not the provisions for reserve and emergency fund accumulations, in chapter 175 of the Laws of 1895, require that the order or association shall keep individual accounts with its members, and credit to such accounts the equitable portion of such reserve or emergency fund; and can such reserve or emergency fund be used or encroached upon except in the *pro rata* or equitable proportion as each member having such interest is liable for his proportionate share in meeting an emergency."

984 Chapter 175 (see section 4) only requires such associations to maintain a reserve or emergency fund of an amount not less than the proceeds of one death or disability assessment or periodical call on all policy or certificate holders thereof, and at least equal to its maximum certificate or policy. If an association only seeks to maintain an emergency fund to the extent required by said section 4, we are of the opinion that it is not necessary to keep an individual account with each member, and credit to the account of each member the equitable proportion of such emergency fund.

As indicated in another letter of this date, addressed to yourself, we are inclined to think, however, that section 11 of chapter 418 of the Laws of 1891, is still in force. The latter section provides for the accumulation of a reserve fund, and declares that such reserve fund "shall be used only to guarantee benefits or be applied in payment of future assessments, or otherwise used for the promotion of the object or objects for which said funds are specially provided and set apart."

985 Where an association accumulates a reserve fund such as that contemplated by said section 11, we are of the opinion that the order or association must keep an individual account with its members, and credit to such accounts the equitable portion of such reserve or emergency fund; and that such reserve or emergency fund cannot be used or encroached upon except as indicated in your question. If under such circumstances, an individual account is not kept, or if the reserve or emergency fund is encroached upon otherwise than as indicated, it will amount to a fraud upon the members whose interests are affected."

No. 4. "You inquire whether an assessment life association licensed to transact business in Wisconsin under the provisions of chapter 175 of the Laws of Wisconsin for the Year 1895, may issue limited payment policies, endowment policies, policies promising a cash surrender, extended or paid up insurance policies.

In order that such associations may be enabled to fulfill definite and absolute agreements such as those referred to by you, it

986 is self evident that they must collect at certain times certain definite premiums or assessments, so as to accumulate a definite guarantee or reserve fund, the same as stock companies. This

would be wholly inconsistent with the flexible assessment principle upon which these associations are founded; and certainly it does not come within their province.

Chapter 418 of the Laws of 1891, which was the law in force regulating this character of insurance associations prior to the enactment of chapter 175, authorizes such associations to provide by by-laws for the accumulation of a reserve or guarantee fund, which might "be used only to guarantee benefits or to be applied in payment of future assessments, or otherwise used for the promotion of the object or objects for which said funds are specially provided and set apart." See section 11.

Chapter 175 which revises the subject matter of said chapter 418, contains no provisions similar to that of section 11 of said chapter 418. At the same time it only purports to repeal acts and parts of acts inconsistent with the provisions of said chapter 175. See section 22 thereof.

987 It cannot be said that section 11 of said chapter 418 is necessarily inconsistent with any of the provisions of chapter 175. Hence it is quite likely that section 11 of said chapter 418 was not repealed by said chapter 175.

See Lewis *vs.* Stout, 22 Wis., 234.
Simmons *vs.* Bradley, 27 Wis., 689.
Curry *vs.* C. & N. W. Ry. Co., 43 Wis., 665.

Certainly it is true that such associations are authorized by law in some of the States to accumulate money for reserve purposes in a manner similar to that provided for in said section 11. Where such associations are authorized to collect funds in addition to what is necessary in order to pay current claims and expenses, they may certainly be permitted to pay to a certificate holder, upon the surrender of his certificate, whatever excess may be equitably due him at the time of the surrender of such certificate; in other words, to pay to the certificate holder a cash surrender of an uncertain amount.

988 They may likewise apply the equitable excess due a member at the end of a certain period, toward extending his insurance, until it shall be absorbed by his *pro rata* of assessments. This would be extended insurance for an uncertain period of time. It is, of course, also possible that such excess may be applied toward carrying a reduced amount of insurance during the member's life, in the nature of paid up insurance, provided the amount of such insurance be left wholly indefinite.

Such associations are not capable of paying a fixed endowment, nor of fulfilling the terms of a limited payment policy, free of future liability to assessment. Where they are authorized to accumulate a reserve, they may agree that the excess at the end of a certain period of years, whatever it may amount to, shall be paid to the certificate holder; and also that such excess at the end of a certain period, may be applied in carrying on the insurance of the member; but the right to levy future assessments when such excess shall

have been used up, must be reserved, and such right to levy future assessments should appear plainly in the policy and literature of such associations. Such associations ought not to be per-
989 mitted to make agreements of the character referred to, even to the extent mentioned in this letter; unless they are authorized, and do, accumulate a reserve fund sufficient for the fulfillment of such agreements.

We are frank to say that all such agreements appear to us to be foreign to the true scope of assessment insurance associations; and yet we cannot advise you that you may legally refuse to license associations of this character, authorized to accumulate a reserve, from entering into agreements of this kind to the extent that we have indicated in our letter. We are of the opinion, however, that you have full authority to investigate the character of the agreements made by such associations in their policies, and to confine them strictly within the proper limit."

The section 11 of chapter 418, Laws of 1891, referred to in opinions Nos. 3 and 4, is as follows:

"SECTION 11. Any corporation, society, order or association transacting business under the provisions of this act, may provide by by-laws, for the accumulation of a reserve or guarantee fund, which may be invested, only in the corporate name of the corpora-
990 tion, society, order, or association, in United States, State, county, city or other first class convertible bonds or securities. Such funds when so set apart and so invested, shall with the increase thereof, belong to such corporation, society, order or association, and shall be used only to guarantee benefits, or be applied in payment of future assessments, or otherwise used for the promotion of the object or objects for which such funds are especially provided and set apart. Such guarantee or reserve fund, or part thereof, may be deposited with the State treasurer for the purpose of securing certificate holders, and the State treasurer shall receive and hold in trust such bonds, stocks or other securities as may be offered by any corporation, society, order or association; and upon application give a certificate receipting for, and showing such deposit; every corporation, society, order or association depositing such securities, shall have the right to receive the income thereof, and to exchange the same from time to time, and to withdraw the same when it no longer desires to maintain such deposit."

All associations and organizations licensed under the pro-
991 visions of chapter 175, Laws of 1895, will be required to comply with the provisions of the law as herein interpreted.

WILLIAM A. FRICKE,
Commissioner of Insurance.

992 WITNESS: I simply want to say this, that I turned over the claim to Mr. Carter to collect back a premium which I had paid the company, as I had refused the policy, it not having been—Mr. Leonard not having represented the case as afterwards

it was shown that the policy read—that they were assessment policies—and I refused to go into assessment insurance.

Q. 75. Mr. Bodden, my questions were directed to the prosecution of this complaint before the insurance commissioner.

Same objections.

A. Well, of course I do not know what relation that has got to my case—I only went to Mr. Carter and I said that I wanted him to bring complaint to the insurance commissioner, because I could not get any satisfaction from the company—after having written several letters to the company in which they refused to return the premiums, the last letter of which I have a copy here, will perhaps explain the thing more fully than anything——

Q. 76. The only question I asked you was whether or not Mr. Carter took charge of this complaint before the insurance commissioner on your behalf.

993 A. I presume he did.

Question objected to as before.

(Another paper marked Defendants' Exhibit 28 shown to witness.)

Mr. MITCHELL: I offer in evidence Defendants' Exhibit 28, which purports to be a certified copy of the decision of the insurance commissioner on the complaint of Alois G. Bodden.

Same objection to Defendants' Exhibit 28 as to Defendants' Exhibit 27.

Exhibit 28 is as follows:

994 DEFENDANTS' EXHIBIT 28. H. D. G., Notary.

Emil Gil Johann, commissioner; R. T. Hazelwood, deputy com'r.

State of Wisconsin, office of commissioner of insurance, Madison, Wisconsin.

MAY 2, 1902.

I, R. T. Hazelwood, deputy commissioner of insurance of the State of Wisconsin do hereby certify that I have compared the hereunto attached copy of the opinion of commissioner of insurance, William A. Fricke, dated July 29, 1897 with the original on file in this department and that the same is a true and correct transcript therefrom and of the whole of said original.

In witness whereof I have hereunto set my hand and affixed the official seal, at the city of Madison, the day and year first above written.

[Seal of Insurance Department, State of Wisconsin.]

R. T. HAZELWOOD,
Deputy Commissioner.

995 (Copy.)

State of Wisconsin, department of insurance.

In re BANKERS LIFE ASSOCIATION OF MINNESOTA.

This matter came before the department upon the complaint of Alois G. Bodden of Milwaukee, who alleges that on or about the twelfth day of November, 1895, he received three policies of insurance, each for two thousand dollars ($2000) from the Bankers Life Association of Minnesota, upon which he paid as a premium, to the agent of said association, the sum of sixty-four dollars and thirty-five cents ($64.35) and that the application for such insurance and the premium paid thereon were obtained from the said Bodden by misrepresentation in that he was led to believe that the said association was a fixed premium company, whereas, after the delivery of the policies he discovered that the association was an assessment association.

996 The complaint also alleges that the association is not complying with the provisions of its articles of incorporation and that it has violated several of its provisions.

Upon the filing of this complaint the association was cited to appear and show cause, July 29th, why its license should not be revoked; at this hearing the complaint filed and the answer submitted by the association were given careful consideration and after the fullest investigation I find, that the policies delivered were in strict accordance with those applied for in the application for insurance. There could have been no misrepresentation as to the character of the company as upon the *estimate of cost blank* furnished there appears printed in red in full face type the following: "Our company is today, by actual statistics, the strongest assessment company in America."

It was upon this blank, mailed to the association, that the complainant requested a statement of the cost of insurance.

997 The literature of the association does not hide the fact that the association is an assessment company and for years the Bankers Life Association of Minnesota has been licensed and authorized to transact an assessment life insurance business in Wisconsin and during that time has promptly met the payment of its claims.

The complainant is also in error as to the charge of violation of the articles of incorporation, the error being due no doubt, to his being misinformed as to amendments of the original articles.

No misrepresentation or violation of the law having been proven, the complaint against the Bankers Life Association of Minnesota is hereby dismissed.

WILLIAM A. FRICKE,
Commissioner of Insurance.

Dated July 29, 1897.

A. G. BODDEN.

998 Cross-examination waived.

A. B. GEILFUSS being first duly cautioned and sworn testified as follows:

Examined by Mr. MITCHELL:

Q. 77. What is your name?
A. Albert B. Geilfuss.
Q. 78. Where do you reside?
A. Milwaukee.
Q. 79. How long have you resided here?
A. Upwards of 40 years.
Q. 80. What is your occupation?
A. State agent Germania Life Insurance Company of New York.
Q. 81. State whether you ever received any written or oral communications in regard to the commencement of any suit against the Bankers Life Association of St. Paul, Minnesota, now the Minnesota Mutual Life Insurance Company.

Objected to as incompetent, irrelevant, immaterial and impertinent, and for the reason that no foundation has been laid for the question, and as inadmissible under the pleadings in the case.

999 A. I do not think I received any written communication regarding it.
Q. 82. Did you receive any oral communications?

Same objections, also as leading.

A. Yes sir.
Q. 83. State if you can when those communications were made to you.

Same objections.

A. The latter part of last year.
Q. 84. Can you fix the month?

Same objections.

A. I can.
Q. 85. What was the date as near as you know?

Same objections.

A. Fore part of August.
Q. 86. 1901?

Same objections.

A. 1901.
Q. 87. State the circumstances of that communication and who made it and what was said.

Same objections, also as being hearsay evidence and *ex parte*.

1000 A. Mr. Goetz of the firm of Dillon & Goetz, attorneys-at-law in Chicago, called at my office in the Germania building,

with his brother, and presented the matter to me and tried during the conversation to convince me that I ought to join in a suit against the former Bankers Life Insurance Company, which I declined to do.

Motion made by complainants' counsel that the part in regard to trying to convince him or induce him to join in the action, be stricken out as not being proper testimony.

Q. 88. State the substance of the conversation which took place between you and Goetz.

Same objections.

A. That is very difficult for me to do. I opposed the matter as a general proposition—being in the same business was the principal reason—and then I did not care to be bothered—having known about the circumstances in previous years.

Motion made by complainants' counsel that the answer be stricken out as not responsive.

Q. 89. State what Mr. Goetz said to you about the commencement of a suit.

Objected to as being incompetent, irrelevant, immaterial
1001 and inadmissible under the pleadings and as hearsay evidence.

A. I do not recollect what his special points were—it is quite a time—I put it aside, declined to enter into the suit, and did not pay any further attention to it.

Q. 90. Well, was there anything said by Mr. Goetz as to whether or not such a suit was contemplated or about to be commenced?

Same objections, also as leading.

A. Yes sir.

Q. 91. State what Mr. Goetz said.

Same objections, also because the question has been asked and answered.

A. He stated, as far as I can recollect, that a suit was intended to be commenced in the United States district court in St. Paul against this company, and my recollection is that the statement was made in order to get a receiver appointed.

Q. 92. Had you had any communication with Mr. Goetz about this suit prior to that interview?

Same objections.

A. No sir.

Q. 93. State whether or not you had invited Mr. Goetz to
1002 your office, to consult about this matter.

Same objections.

A. No sir, it was the first time I had met Mr. Goetz.

Q. 94. Were any papers or documents connected with this suit exhibited to you at that time?

Same objections, for the same reasons as before given.

A. Yes sir.

Q. 95. By whom?

Same objections.

A. By Mr. Goetz.

Q. 96. Have you the papers that you exhibited to him?

Mr. GOETZ: I have not, no sir.

Mr. MITCHELL: I will ask Mr. Goetz to produce at this time the papers which he exhibited to Mr. Geilfuss at that time, relating to this suit.

Mr. GOETZ: I decline to produce the papers on the ground that they are matters pertaining to this suit and as such are privileged and I am not obliged to produce them, and I would like to say furthermore that I have not got them.

1003 Mr. MITCHELL:

Q. 97. What was the nature of these papers that were exhibited to you at that time, Mr. Geilfuss, by Mr. Goetz?

Same objections.

A. Well, that is very difficult to answer—to a layman like myself it appeared to be the commencement of a suit to be signed by a complainant.

Q. 98. Was that paper exhibited to you typewritten or written in pen and ink or in what form was it?

Same objections.

A. Principally typewritten—may be some changes in pen or pencil.

Motion made by complainants' counsel to strike out the last two answers as not being the best evidence.

Q. 99. State in whose handwriting, if you know, the pen and ink or pencil part of that complaint was written.

Same objections.

A. There appeared on the lower part of one of the pages of this document, something in the form of suggestion or addition written in pencil, which was in the handwriting of Mr. E. D. Carter.

Q. 100. Are you acquainted with the handwriting of Mr. E. D. Carter?

1004 Objected to as incompetent, irrelevant and immaterial and not admissible under the pleadings of the case and for the reason that no foundation has been laid for the question.

(Counsel produces paper and has same marked Defendants' Exhibit 29)

Mr. MITCHELL: I will offer in evidence Defendants' Exhibit 29, which is a notice to produce papers referred to by the witness, with admission of service by the firm of Dillon & Goetz.

Objected to as being incompetent, irrelevant and immaterial and inadmissible under the pleadings and as pertaining to a privileged matter.

Exhibit 29 is as follows:

1005 DEFENDANTS' EXHIBIT 29. H. D. G., Notary.

United States Circuit Court for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs,
vs.
MINNESOTA MUTUAL LIFE INSURANCE COMPANY and Others, Defendants.

Notice to Produce.

To Messrs. John F. Byers, Dillon and Goetz, solicitors for plaintiffs:

You will please to take notice that you are hereby required and requested to produce before Henry D. Goodwin, a commissioner appointed to take testimony at his office, 126 New Insurance bldg. in the city of Milwaukee, State of Wisconsin on Saturday the 3rd day of May, 1902, at 10 o'clock in the forenoon, each and every draft of the bill of complaint in this cause in your possession, custody or control. You are also required to produce each and every
1006 preliminary draft of the bill of complaint in this cause and of each and every part thereof, also that draft of the bill of complaint in this cause and the other paper relating to this cause exhibited by Mr. Albert Goetz to Mr. A. E. Geilfuss on the 8th day of August, 1901, at the city of Milwaukee, State of Wisconsin at the office of said Geilfuss, and if you fail to produce the papers above specified, the defendants will give other evidence of the contents thereof.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

Received copy of above this 1st day of May 1902.
DILLON & GOETZ.
ALBERT GOETZ.

1007 Q. 102. In whose possession were these papers that were exhibited to you by Mr. Goetz?

Objected to for the reasons before given.

A. In Mr. Goetz's possession.
Q. 103. Were these papers left with you at that time?

Same objections.

A. No sir.
Q. 104. What became of them?

Same objections, and also that these questions are leading.

Q. 105. Or do you know?

Same objections.

A. Mr. Goetz put them back into his pocket.
Q. 106–7. Have you any method of fixing the exact date of that interview?

Same objections.

A. I have.
Q. 108. How can you fix it?

Same objections.

A. I generally enter matters of importance on a diary and this matter I looked up as to date and I found that it was August
1008 8, 1901, when Mr. Goetz was in my office.

Objected to as leading and motion made to strike out as not responsive.

Q. 109. Are you in the habit of making diary entries of your business transactions?

Same objections.

A. Of the important ones, yes.
Q. 110. At what time are these entries made?

Same objections.

A. On the day they occur most generally.

Motion made by complainants' counsel that the witness's answers be stricken out as regards memoranda as not being the best evidence.

Q. 111. Did you make any memoranda of this interview in your diary at this time?

Same objections.

A. Yes, I did.
Q. 112. Have you refreshed your memory from those memoranda?

Same objections.

A. Yes, this morning.
Q. 113. State the date on which this interview occurred.

Same objections.

1009 A. I stated it before—August 8, 1901.

Q. 114. Do you know Mr. Edmund D. Carter?

Same objections and also as leading.

A. I do.

Q. 115. Did Mr. Carter ever have any interview with you in regard to the affairs of the Bankers Life Association?

Objected to for the same reasons as before given.

A. Yes, quite a number of times.

Q. 116. Did any such interview take place during the year 1900?

Same objections.

A. I don't recollect.

Q. 117. State, if you can recollect, where any one of these interviews took place and the circumstances and what was said?

Objected to as incompetent, irrelevant, immaterial, impertinent and inadmissible under the pleadings, *ex parte* and hearsay.

A. We talked about the matters relating to the Bankers Life Insurance Company most generally in my office, but sometimes on the street.

Q. 118. Do you recollect anything that Mr. Carter said at any of these interviews?

1010 Same objections.

A. I merely recollect that in a general way his statements were adverse to the company and that he intended to go before the grand jury, and other things that occurred in connection with the trouble since it originated on the suit of Mr. Bodden—as I said before, I did not pay any special attention to it—that is in the way of making a memorandum about such things—I had declined to go into the matter more than to address the company regarding questions that arose, which I did. And I did not get that satisfaction that I expected to receive, and so stated to Mr.—the agent—a short man—I don't recollect his name.

Q. 119. Did you ever attend any meeting of the policy holders of the Bankers Life Association in the city of Milwaukee?

Same objections.

A. Yes, sir.

Q. 120. Who called that meeting?

Same objections and for the reason that the questions are leading.

Q. 121. If anybody.

Same objections.

1011 A. I do not know who called it, but Mr. Carter invited me to come up there.

Q. 122. Can you recollect when this meeting occurred?

Same objections.

A. No, I cannot.

Q. 123. In what year?

Same objections.

A. I have no recollection—no.

Q. 124. Do you recollect where this meeting was held?

Same objections.

A. I think it was held in the University building.

Q. 125. Was the entire meeting held at the University building or was there an adjournment to any other place?

Same objections.

A. I could not tell positively, because I came later than the meeting was called for—there was a good deal of wrangling going on and loud talking and speeches.

Motion made to strike out as not responsive.

Q. 126. Was it in a hall of that building or in a private office?

1012 Objected to as leading and also as irrelevant, immaterial and incompetent, not admissible under the pleadings and as being *ex parte* evidence and hearsay.

A. It was in a private office, I think.

Q. 127. Who was the chief spokesman at that meeting?

Same objections for the same reasons.

A. Well, Mr. Carter and Mr. Burke, Mr. Joshua Stark and Mr. Louis Hoenes.

Q. 128. What was the substance of Mr. Carter's statement at that meeting as far as you recollect?

Objected to for the reasons given.

A. I do not remember any special matter—the meeting turned out to be a fizzle—it was all in a general way relating to the Bankers Life Insurance Company—dissatisfaction among its members.

Motion made by complainants's counsel that the answer be stricken out as not being proper testimony.

Q. 129. Did Mr. Carter make any statements for or against the company at that time?

Same objections.

A. His statements were against the company.

Q. 130. Was any action taken at that meeting in regard to any proceedings against the company?

1013 Objected to for the reasons given.

A. I think not.

Q. 131. Did not Mr. Carter make any suggestions in that regard?

Same objections for the same reasons.

A. I do not remember.

Cross-examination waived.

A. B. GEILFUSS.

1014 HENRY KUENZLI being first duly cautioned and sworn testified as follows:

Examined by Mr. MITCHELL:

Q. 132. What is your full name?
A. Henry Kuenzli.
Q. 133. Where do you reside?
A. Milwaukee.
Q. 134. How long have you resided here?
A. About 46 years.
Q. 135. What is your business?
A. Merchant.
Q. 136. Are you a member of the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Insurance Company of Minnesota?
A. I am—rather I am a member of the old plan—well, of course, that is——
Q. 137. State substantially how long you have been a member.
A. I think since 1892—I have my policies with me if you want to fix the date.
Q. 138. Have you ever received any communication from any person in regard to a suit pending or about to be brought
1015 against the Bankers Life Association of St. Paul?

Objected to as incompetent, irrelevant, immaterial and not admissible under the pleadings and as leading.

A. I could not say that I received any communication.
Q. 139. Did any person ever come to see you about any such suit?

Same objections.

A. Yes sir.
Q. 140. State if you know when that interview took place—substantially.

Same objections.

A. If I remember rightly it was last year in probably July or August—I cannot tell exactly—I did not pay much attention to it.

Q. 141. Where did the interview take place?

Same objections.

A. My office, Germania building.

Q. 142. Who came to see you and what was said at that time?

Same objections.

A. Messrs. Dillon & Goetz.

Q. 143. What was said by the person that came to see you at that time?

1016 Same objections.

A. It was said that they were representing the members of the Bankers Life in a pending suit going to be installed against the life insurance company, and they wanted to know if I would join, and I refused to entertain any—to have anything to do with it.

Motion made by complainants' counsel that the answer be stricken out as not being responsive.

Q. 144. Did the person that came to see you come in response to an invitation to you?

Same objections.

A. No sir, he did not.

Q. 145. Did you ever receive any communication in any way from the firm of Dillon & Goetz in regard to this suit?

Same objections.

A. Well, I did in a way—yes.

Q. 146. State what that communication was.

Same objections.

A. It was on my own question to them after I saw an item in the paper that they were appointed by some gentleman here as attorneys in the case—I wrote to them and I asked if they were attorneys for some—what the conditions would be if I
1017 joined in—the costs, etc., and I received an answer——

Motion made to strike out the answer as not being the best evidence.

Q. 147. Was this after they called on you?

Same objections.

A. It was after they called on me.

Q. 148. Have you with you the communication you received from them at that time?

Same objections.

A. I think I have.
Q. 149. Let me see it.

(Papers produced by witness and marked Defendants' Exhibits 30 and 31.)

Q. 150. I show you Defendants' Exhibit 30 which purports to be a letter from Dillon & Goetz to you and ask you what that is.

Same objections and as incompetent, irrelevant, immaterial and as not the best evidence.

Q. 151. Is that the communication you referred to?

Same objections.

A. Yes sir, that is one of them.
Q. 152. How did you receive that?

Same objections.

1018 A. Through the mail.

Defendants' Exhibit 30 offered in evidence.
Objected to as being incompetent, irrelevant and immaterial, no foundation laid and as being impertinent, *ex parte* evidence and privileged matter.
Defendants' Exhibit 30 is as follows:

1019 DEFENDANTS' EXHIBIT 30. H. D. G., Notary.

Walter S. Dillon. Albert Goetz.

Dillon & Goetz, attorneys and counselors, Masonic temple, suite 1510.

Telephone central 3381.

CHICAGO, *October* 26, 1901.

H. Kuenzli, Esq., Milwaukee, Wis.

DEAR SIR: Yours of the 24th inst. requesting information as to terms etc. in connection with including you in the action now pending against the Minn. Mutual Life Ins. Co. at hand.
In compliance therewith we send to you herewith blank authorization with the arrangements we are making with the other members printed on the back. Please fill up the blank if satisfactory and forward same to us. We presume you have continued
1020 paying your premium. Awaiting your pleasure, we are,
Yours very truly, DILLON & GOETZ.

1021 Q. 153. State if you recollect about what time you received that letter.

Objected to for the same reasons.

A. It was written October 26th and I presume I received it October 27.

Q. 154. Were there any other papers enclosed with that letter at the time that you received it?

Same objections.

A. This notice.

(Witness refers to Defendants' Exhibit 31)

WITNESS: That is one of these—there were two notices and this is one of them—this is a duplicate.

Q. 155. I show you Defendants' Exhibit 31 and ask you if that is what you refer to as being enclosed in that letter?

Same objections.

A. That was enclosed in the letter of the 26th.

Defendants' Exhibit 31 offered in evidence.
Same objections.
Defendants' Exhibit 31 is as follows:

1022 DEFENDANTS' EXHIBIT 31. H. D. G., Notary.

OCTOBER, 1901.

To Dillon & Goetz and John F. Byers:

I hereby authorize you to join me in the suit now pending against the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota, to obtain the relief necessary for the protection of my rights as a member of the Bankers Life Association of Minnesota under certificate No. — issued on the —day of —— A. D., 1—— for $—

(Signed) ——— ———.

Over

On the back: Costs, expenses and attorneys' fees to be paid out of proceeds *pro rata*, by order of court, otherwise you are only to be liable for your share of costs and expenses not to exceed three dollars.

1023 (Paper marked Defendants' Exhibit 32 produced by counsel for defendants.)

Q. 156. Did you authorize Messrs. Dillon & Goetz to represent you in this case?

Same objections.

A. Well, I signed that notice to represent my case at the time.

Q. 157. Are you still in the case or have you withdrawn?

Same objections.

A. I have withdrawn.

Q. 158. Did you receive any other communication from Messrs. Dillon & Goetz in this matter?

Same objections.

A. I received one dated October 28th.

(Witness refers to Exhibit 32.)

Q. 159. How did that communication come to you?

Same objections.

A. By mail.

Q. 160. I show you Defendants' Exhibit 32 and ask you if that is the paper that you received through the mail?

Same objections.

1024 A. That is the paper that I received.

Q. 161. Was that received in response to any communication that you had sent them?

Same objections.

A. Yes, sir, it was.

Paper referred to offered in evidence, being Defendants' Exhibit 32.

Defendants' Exhibit 32 is objected to as being incompetent, irrelevant and immaterial and inadmissible under the pleadings and as *ex parte* evidence.

Defendants' Exhibit 32 is as follows:

1025 DEFENDANTS' EXHIBIT 32. H. D. G., Notary.

Walter S. Dillon. Albert Goetz.

Dillon & Goetz, attorneys and counselors, Masonic temple, suite 1510.

Telephone central 3381.

CHICAGO, ILLS., *Oct. 28th*, /01.

Mr. H. Kuenzli, Milwaukee, Wis.

DEAR SIR: Your esteemed favor of the 28th inst., with power to enter your name in the suit now pending against the Minn. Mutual Life Ins. Co., of St. Paul, Minn., received; for which please accept our thanks: regarding the payment of assessments we would advise, as not more than one or two will be made before the court acts in the matter, that you continue to pay them. We will keep you advised as to progress in the matter.

Yours truly, DILLON & GOETZ.

1026 Cross-examination.

By Mr. DILLON:

X Q 162. How old are you, Mr. Kuenzli?
A. 64 years.

HENRY KUENZLI.

O. K.
H. D. GOODWIN, *Notary.*

1027 A. B. GEILFUSS recalled testified as follows:

Examined by Mr. MITCHELL:

Q. 163. Are you a policy holder or member of the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of St. Paul, Minnesota?
A. Yes sir.
Q. 164. State substantially how long you have been a member.
A. Over ten years—I cannot tell the exact date.
Q. 165. Do you hold a policy or certificate in the company?
A. I hold three certificates of $2000 each.

Cross-examination.

By Mr. DILLON:

X Q. 166. Were you ever solicited by agents of this company to change your certificates from the assessment plan to the new plan that they have adopted?

Objected to as not cross-examination.

A. I was.
X Q. 167. How many times about?

Same objection.

A. Three or four times I should think.
1028 X Q. 168. Were any inducements, as you remember, by way of credits offered for the change?

Same objection.

A. Yes sir.
X Q. 169. State what they were.

Same objection.

A. I could not state that exactly—I was dissatisfied with the inducements—they were not sufficient.

A. B. GEILFUSS.

1029 MATTHEW SCHAREL being first duly cautioned and sworn testified as follows:

Examined by Mr. PALMER:

Complainants' counsel object to the testimony of this witness being taken, on the ground that no proper notice of the taking of the deposition has been served according to the rules governing this court.

Q. 170. What is your name?
A. Matthew Scharel.
Q. 171. You reside in the city of Milwaukee, do you not?
A. I do.
Q. 172. How long have you resided in the city?
A. I was born here.
Q. 173. Do you know Edmund D. Carter?

Objected to as incompetent, irrelevant, immaterial and inadmissible under the pleadings, leading and for the reason that no foundation for the question has been laid.

A. I do.
Q. 174. When did you first meet Mr. Carter?

Objected to for the same reasons.

1030 A. I guess it was in June, 1900.
Q. 175. Where did you meet him?

Same objections.

A. He came up to my residence.
Q. 176. In Milwaukee?

Same objections.

A. In Milwaukee.
Q. 177. Did you there hold any conversation with him on that date?

Same objections.

A. I did.
Q. 178. Will you state the substance of that conversation as near as you recollect it?

Same objections.

A. Well, Mr. Carter came up and he said to me that he was about to start an action against the Bankers Life Association, providing that the members would give him enough of a bonus to start it, and that Joshua Stark of this city was the attorney.
Q. 179. State what further, if anything, he said at that time?

1031 Same objections.

A. He said he was going to hold a meeting at the Merchants &

Manufacturers hall in a few days from that time, that he was going to send circulars out to all the members of the Bankers Life Association here at Milwaukee.

Complainants' counsel move that the last two answers be stricken out as being hearsay evidence.

WITNESS: That is what he said.

Q. 180. Is there such a hall as the Merchants & Manufacturers hall in this city?

Same objections and also as leading.

A. There is.

Q. 181. State, if you know, in what building that is.

Same objections.

A. University building.

Q. 182. State whether or not you received any notice of a meeting to be held at the Merchants & Manufacturers hall.

Objected to for the same reasons.

A. I did.

Q. 183. Have you that notice?

1032 Same objections.

A. I haven't it.

Q. 184. Do you recollect what you did with it?

Objected to for the same reasons.

A. I guess I handed it over to Mr. Burke.

Q. 185. When?

Same objections.

A. The day before the meeting was called.

Q. 186. State whether or not you know of any meeting of any of the members of the Bankers Life Association of Minnesota having been held in Milwaukee during the summer of 1900?

Objected to as incompetent, irrelevant and immaterial and inadmissible under the pleadings and as hearsay evidence and as leading.

A. I do.

Q. 187. If you recollect state the date when that meeting was held.

Same objections.

A. It was in the month of June 1900—I do not recollect the date exactly.

Q. 188. Where was the meeting held?

Same objections.

1033 A. In the Merchants & Manufacturers hall in the University building.

Q. 189. State whether that meeting was held before or after Mr. Carter's call upon you.

Same objections.

A. Afterwards.

Q. 190. State if you recollect, about how long afterwards.

Same objections.

A. About four days.

Q. 191. State, if you recollect, whether or not Mr. Carter was present at that meeting.

Same objections.

A. He was.

Q. 192. State whether or not the entire meeting was held in the Merchants & Manufacturers hall.

Same objections.

A. It was not.

Q. 193. Were you present during the entire meeting?

Same objections.

A. I was.

Q. 194. Please state what occurred in the Merchants &
1034 Manufacturers hall—that is, what part of the meeting took place there—and then what occurred following that at that meeting.

Same objections.

A. Well, Mr. Burke came in there with several other gentlemen—Mr. Scanlon, and I guess yourself, if I remember. And Mr. Carter wanted to throw the gentlemen out and Mr. Burke would not move so Mr. Carter got the police up in the hall—I guess two or three policemen up there, and Mr. Burke would not get out of the hall and the other gentlemen would not get out, so they removed the meeting down to Mr. Bogk's office.

Q. 195. In the same building?

Same objections, and also for the reason that the questions are leading.

A. Yes.

Q. 196. State whether or not you went with Mr. Carter and those who followed him, down to Mr. Bogk's office.

Same objections.

A. Yes.

Q. 197. State whether or not you remained throughout the meeting there.

Same objections.

1035 A. I did.

Q. 198. State whether or not Mr. Burke and the other gentleman who accompanied him also adjourned to this other room with you and Carter and the other gentlemen?

Same objections.

A. He did not.

Q. 199. Will you state what took place at Mr. Bogk's room at that meeting.

Same objections, and also that these questions are leading.

A. Why, Mr. Carter reopened the meeting with a big long speech and argument and Mr. Stark followed him.

Q. 200. What was the substance of Mr. Carter's talk?

Same objections.

A. Why, he wanted to get the members to get up enough money so as to send him to Madison with Mr. Stark and up to St. Paul—wanted the members to raise over a thousand dollars for the trip.

Complainants' counsel moves that the answers be stricken out as being hearsay and not material.

Q. 201. State what further, if anything, Carter said in re-
1036 lation to the company and what he proposed to do.

Objected to as immaterial, incompetent, irrelevant, impertinent and as having no bearing on the case, and for the reason that no foundation has been laid for it, as leading as *ex parte* and as hearsay evidence.

A. He proposed to start a suit on behalf of the stockholders against the Bankers Life Association.

Q. 202. Did he say what for—to accomplish what purpose?

Same objections.

A. I don't remember.

Q. 203. Did any of the gentlemen who were present other than Mr. Carter make any reply to Mr. Carter's remarks?

Same objections.

A. They did.

Q. 204. State if you recollect what was said during Mr. Carter's presence and yours.

Same objections.

A. Well, they asked Carter whether he was a member of the Bankers Life Association of St. Paul and he replied that he was not. They wanted to know what business he had to mix up with this affair and what benefit—if he was not a member.

1037 A. 205. What did he say?

Same objections.

A. Why he said he wanted to mix up in behalf of the insured policy holders.

Q. 206. Well, state what action if any, the members took upon Mr. Carter's statements and his suggestion for a contribution.

Same objections.

A. Well, I remember that much, that Joshua Stark got disgusted—his attorney—and left the hall before the meeting was one quarter through.

Motion made that the answer about what he thinks be stricken out, and that he tell only what he knows was actually said, and that only be allowed to stand as evidence.

Q. 207. What did Mr. Stark say in substance?

A. Mr. Stark held an argument there and said if the members would put enough money up for him and Carter to go to Madison and St. Paul to examine the books he would undertake the case, and in no other way—he wanted the cash in advance of course.

Q. 208. What did the members say in relation to placing

1038 the cash in advance in their hands?

Same objections.

A. Why, they did not take any stock in Mr. Carter.

Q. 209. What did they tell them about it?

Same objections.

A. Why, they were not ready to do it, that they did not want anything to do with it.

Q. 210. Is that what was said?

Same objections.

A. They did not say that exactly, but expressed themselves to such effect.

Q. 211. Was there any formal motion to adjourn that meeting?

Same objections.

A. Yes.

Q. 212. Question repeated.

Same objections.

A. Mr. Carter wanted to call a new meeting.

Q. 213. Well, how did the meeting wind up that night?

Same objections.

A. The meeting wound up—the members all left the room not taking any stock in Carter whatsoever.

1039 Complainants' counsel objects to these answers for the same reasons as above given and also for the reason that they are conclusions, and moves to strike them out.

Q. 214. And what did he say about Carter's wanting another meeting?

Same objections.

(No answer.)

Q. 215. What did he say if anything, in relation to that?

Same objections.

A. Well, he did not exactly state that he would call another meeting—he said he would consider the matter and if there was another meeting to be called he would leave the members know.

Q. 216. Did you meet Mr. Carter during the summer of 1900 subsequently to this meeting that you have referred to?

Same objections.

A. I did meet the gentleman.

Q. 217. About how long after this meeting that you have referred to?

Same objections.

1040 A. The next morning in front of the Miller block.

Q. 218. In Milwaukee, of course?

A. Yes.

Q. 219. Did you hold any conversation with Mr. Carter relative to the meeting or to the Bankers Life Association?

Same objections.

A. I did.

Q. 220. Will you state the substance of that conversation, how it was introduced and what was said—so far as you recollect it?

Same objections.

A. Well, he said that he felt sorry that he could not do anything with the members—they were too blockheaded.

Q. 221. What further, if anything did he say?

Same objections.

A. He said possibly he was going to hold another meeting, but he did not think it necessary because he could not do anything with

the members—it seemed that way that he could not do anything with the members—they were too blockheaded.

Q. 222. Did you meet him again after that?

Same objections.

A. Oh, I met him a ½ dozen times after that.

Q. 223. Did you hold any conversation with him about the company?

1041 Same objections.

A. I did.

Q. 224. During what year was that that you held these subsequent conversations?

Same objections.

A. The fall of 1900.

Q. 225. State the substance of those conversations as you recollect them.

Same objections.

A. Well, I met Mr. Carter near the First national bank on Wisconsin street here in this city, and I says to him—he says, How do you do, Mr. Scharel, and I said How do you do Mr. Carter, and I said How are you succeeding with the Bankers Life Association of St. Paul? Why, he says, as I told you before, I cannot do anything with the blockheads—the members had their own stubborn way about it.

Q. 226. Do you recollect anything further that he said to you—if you do you may state it.

Same objections.

A. He said that he had a case pending in the United States court and he showed me a form of a complaint that he had against the Bankers Life.

1042 Q. 227. When was that?

Same objections.

A. That was, I believe in November.

Q. 228. Of 1900?

Same objections.

A. Yes.

Q. 229. You were formerly a member of the Bankers Life Association of Minnesota, weren't you?

Same objections.

A. I was.

Cross-examination.

By Mr. DILLON:

X Q. 230. Did you ever receive any money for anything you ever did for the Bankers Life Association of Minnesota?

A. I don't remember.

X Q. 231. Did you ever receive any money from any of its agents or officers or through them?

A. As I told you before I don't remember.

X Q. 232. You are not now a member of the company?

A. I am not.

1043 X Q. 233. Before you came in to-day did you have a talk with Mr. Palmer or Mr. Mitchell here in regard to this case?

A. I did not meet that gentleman before—Mr. Mitchell.

X Q. 234. Question repeated.

A. I did not—I said good day, to Mr. Palmer here, and talked about real estate up in St. Paul.

X Q. 235. Did you have a talk with him in reference to this case, what you were to testify here to-day?

Mr. PALMER:

X Q. 236. What do you mean, here in this room or before?

Mr. DILLON:

X Q. 237. Did you have a conversation with Mr. Palmer in which anything was said in regard to what you were to testify to here to-day?

Objected to because it is not confined to any date.

A. I said to Mr. Palmer, Why did you bring me down here?

X Q. 238. I am asking you yes or no.

Question repeated.

A. I did.

Redirect-examination.

By Mr. PALMER:

Q. 239. Mr. Scharel, when did you see me to speak to me prior to my meeting you here in this room this morning?

1044 A. The last was in 1900.

Q. 240. When did you last see Mr. Burke prior to meeting him here in this room this morning?

Objected to as not redirect-examination.

A. In the month of October.

Q. 241. What year?

A. 1901.

Q. 242. When were you subpœnaed to appear here?

Objected to as incompetent, irrelevant and immaterial, as not covered by the pleadings, and as not proper redirect examination.

A. Yesterday.
Q. 243. By whom?

Same objections.

A. By a marshal I presume.
Q. 244. Did you know the man?

Same objections.

A. I did not.
Q. 245. Did you have any conversation with him in any way relative to this matter?

Same objections.

A. No sir.

1045 Q. 246. State whether or not prior to being served with that subpœna you had conversed with anybody representative of this company or in anyway in relation to this matter.

Same objections.

A. I did not.
Q. 247. What were you paid when this subpœna was served upon you?

Same objections.

A. I was paid $1.60.
Q. 248. Any more?

Same objections.

A. Not any more.

MATTHEW SCHAREL.

A recess was here taken until 2 p. m. same day and place.

1046 Same day and place 2 p. m. parties appeared and taking of depositions resumed.

SAMUEL WRIGHT being first duly cautioned and sworn testified as follows:

Examined by Mr. PALMER:

Q. 249. What is your full name?
A. Samuel Wright.
Q. 250. You are one of the plaintiffs in this case?

A. I am a plaintiff, yes sir.
Q. 251. Your testimony was taken on behalf of the plaintiffs in this suit in the month of March, was it not?
A. It was taken—just the date I don't remember.
Q. 252. Where do you reside?
A. Milwaukee.
Q. 253. How long have you resided here?
A. 16 years.
Q. 254. I think you stated in your former examination that at the time you became a member of the defendant company you were a druggist?
A. I was.
Q. 255. And you continued that business down to what date?

1047 Objected to as immaterial and incompetent.

A. Until last May.
Q. 256. May 1901?

Same objections.

A. A little less than a year ago.
Q. 257. What has been your occupation since that time?

Same objections.

A. Well, I am justice of the peace at the present time.
Q. 258. How long have you held that office?

Objected to as incompetent, irrelevant and immaterial.

A. I was elected on election day a month ago.
Q. 259. And your occupation immediately previous to that, since you retired from the drug business has been what?

Same objections.

A. Practising law.
Q. 260. When were you admitted to the bar?

Objected to as immaterial, incompetent and irrelevant.

A. I think it was about probably three or four years ago—I don't recollect the exact date.
Q. 261. What is your age Mr. Wright?

Same objections.

A. 50

1048 Q. 262. Mr. Wright, on your former examination you were asked the following question, on direct examination:
"Q. What action did you take after this in regard to paying assessments—after this conversation and these communications?" Your answer was as follows: "I immediately consulted some attorneys and with a number of other members of the association we had

a meeting and discussed matters from time to time. The first attorney that I discussed the matter with was Joshua Stark." Mr. Stark was the first attorney that you consulted?

Objected to as immaterial, incompetent, irrelevant and inadmissible under the pleadings in the case and for the reason that no foundation has been laid for the question.

A. That is the best of my recollection.

Q. 263. That was in the month of June, 1900, was it not?

Same objections.

A. Well, I have not my papers here—I have no way to refresh my memory just at this time.

Q. 264. Get as near to it as you can.

Same objections.

A. I had the papers at that time—whatever I stated then is correct.

1049 Q. 265. Attached to your deposition is Exhibit Q which you identified and offered in evidence, which is a letter dated St. Paul, Minnesota, June 8th, 1900, addressed to Samuel Wright, 600 Grand avenue, Milwaukee, Wisconsin, purporting to be signed Bankers Life Association, per Clarence E. Secor, manager. This letter is in the following language:

"DEAR SIR: Answering your inquiry of the 4th inst., will state with all possible brevity, the new policy provides for loans, paid up and extended insurance, but there is no such provision in the old post mortem contract such as you carried with us. In short, it was an assessment policy pure and simple, namely, pay for what you get and get what you pay for, the same as fire insurance."

Attached to your deposition is Exhibit N, which you identified. That is a letter bearing date, Milwaukee, June 4th, 1900, with the heading, Samuel Wright, attorney at law, 600 Grand avenue, addressed to the Bankers Life Association of St. Paul, Minnesota, signed Samuel Wright. This letter reads as follows:

"In October last I ordered your State manager, Mr. E. W. Leonard to cancel my certificates or policies, numbered 16068 and 16069 at once, as I did not desire to embrace your new plan.

1050 At that time you gave me a statement showing that I had coming to me the sum of $137 (one hundred and thirty-seven dollars). I now demand of you the return to me at once of the above amount with interest thereon, together with any other sum that may be due to me from your company."

Having had your attention called to these two letters will you kindly state now whether the consultation you had with Mr. Stark was about the date of these two letters?

Objected to as immaterial, incompetent, irrelevant and inadmissible under the pleadings, for the reason that no foundation has been

laid for it, and as hearsay and not proper evidence at all in any way or shape.

A. I think so—I had several consultations with him I think about that time—that is the best of my recollection—some of them may have been before and some afterwards—I should judge from the tone of the letter that it was about that time.

Q. 266. And it was about that time that there were meetings of the members that you referred to?

Same objection.

A. There were some meetings I think about that time.

1051 Q. 267. There was a meeting at the Merchants & Manufacturers hall in the University building in this city at which Mr. Stark presided?

Same objections.

A. There was a meeting called by Mr. Stark which I attended—I got there late and left early.

Q. 268. About that time, in June?

Same objections.

A. Some time I think about then—yes—that is the way I recollect, but I recollect the meeting better than I do the dates.

Q. 269. How did you receive notice of that meeting?

Same objections.

A. By mail.

Q. 270. That notice purported to be signed by Edmund David Carter, did it not?

Same objections.

A. No sir. (O. K. H. D. G., notary.)

Q. 271. Was it written or typewritten?

Same objections.

A. My recollection is it was typewritten.

1052 Q. 272. You attended the meeting at the Merchants & Manufacturers hall?

Same objections.

A. Yes.

Q. 273. Do you remember who took part in that meeting besides Mr. Stark?

Same objections.

A. I arrived there about half past eight or nine—when I got there Mr. Stark was talking—I had to stand by the door—it was a small room—it was crowded inside the door.

Q. 274. That was after the meeting had adjourned down to Bogk's office?

Same objections.

A. I do not know anything about that—I was not there.

Q. 275. What was the small room that you refer to?

Same objections.

A. Well, it was a part of this Manufacturers institution I suppose—the club room—where the elevator man told me that they were having their meeting—I was late—it was a small room crowded.

1053 Q. 276. Who else did you hear talk there then?

Same objections.

A. There were several talking—the only one that I recall at the present time was Mr. Rauschenberger, who was then ex-mayor—I remember him—there were several there that I did not know—most of them I did not know personally.

Q. 277. Was Mr. Carter there and did he make a good many statements to the members about the company?

Same objections.

A. I don't remember.

Q. 278. Was there any gentleman that you heard suggesting the idea that the members should raise money to send him and Mr. Stark to investigate the affairs of the company?

Same objections.

A. The matters were generally discussed—there was a German who took quite a prominent part in it, but I do not recall who he was—I did not know him then—I may have known him since.

Q. 279. Who went to Mr. Stark's office besides you when you went to interview him?

Same objections

A. I went alone—no one accompanied me.

1054 Q. 280. After your meeting in June, 1900, what if any steps did you take looking to the protection of what you supposed were your interests in the Bankers Life Association?

Same objections.

A. Well, we commenced this action—you refer to this action—that was the first thing tangible that was done so far as I know—the only thing I recall—matters might have been discussed and ideas suggested, but the only tangible thing that I remember was the commencement of this suit.

Q. 281. Do you recollect of having any conversation with any-

body in relation to the commencement of this suit or your rights in the Bankers Life Association, prior to its commencement?

Same objections.

A. Oh, yes, a number of parties—I don't recall now.

Q. 282-3. When did you first consider the idea of bringing this suit, or when did you conclude to bring this suit?

Same objections.

A. Well, that is a pretty hard thing to say—the matter was discussed from the moment that I had conversation with that Mr. Leonard, if that was his name, that agent.

Q. 284. That was in 1899?

Same objections.

1055 A. Oh, no—just previous to this date—probably it would be 1900 or it may have been 1899, I have forgotten—it was along in there—it was the latter part of 1899 I think, that is true—it was previous to this letter that you have quoted there—in the latter part of the year previous—these dates are all from my recollection—I have nothing to refresh my memory.

Q. 285. I call your attention to Exhibit P attached to your deposition taken on behalf of plaintiffs, which was identified by you, which purports to be a letter bearing date December 13th, 1899, addressed to Mr. E. W. Leonard, Esq., care of Hotel Blatz, city, signed by Samuel Wright, which reads as follows:

"DEAR SIR: Yours of the 12th at hand, contents noted. I see no reason for changing my mind since I saw you two or three months ago. I shall adhere to my then determination which was to cancel."

Q. Now did you see Mr. Leonard in December 1899 to talk with him?

Objected to as immaterial, and incompetent and for the reason that no foundation has been laid.

A. Well, I saw him several times—it may have been dur-
1056 ing November—I got the letter in December—because that is the answer to it.

Q. 286-8. And you had talked with him previously to that?

Same objections.

A. Yes sir.

Q. 289. But did you have any conversation with Mr. Leonard subsequently to December 13, 1899?

Same objections.

A. I cannot say that I did—I am not certain about that—I saw Mr. Leonard a number of times—sometimes the conversation would be

only a few words. "Have you thought that matter over again" he would say.

Q. 290. But did you see Leonard at all after December 13, 1899?

Same objections.

A. I think that letter closed the talk—that is the impression I have got now—though that might not be correct.

Q. 291. Now did you form the conclusion to institute the present suit, in December 1899?

Same objections.

A. I made a demand upon him for the amount that he claimed that I was entitled to at that time.

1057 Q. 292. You made a demand on him for the amount of your guaranty trust fund deposit and accretions?

Same objections.

A. Yes sir.

Q. 294. But when did you come to the conclusion to institute this particular suit?

Same objections.

A. In my conversation with him

Q. 295. This particular suit?

Same objections.

A. I would not say that, because that matter was discussed—I hardly knew what kind of a suit would be commenced—I told him at the time that if I had $137 or $133 there that I wanted the money and that I wanted to insure where I saw fit, and that if they did not pay me, why the probability was that I would try to make them pay me—I did not say when I would commence it and I did not know then.

Q. 296. When did you come to the conclusion to bring this suit?

Same objections.

A. I cannot tell—I do not know when this suit was begun.

1058 Q. 297. I can tell you it was commenced in the early part of October, 1901—that is last October.

Same objections.

A. Well, I had decided to commence a suit the very moment I was talking to this man Leonard if they did not pay me that amount of money, I told him so at the time, and the matter of the exact time when the suit was to be commenced, that was an after consideration.

Q. 298. Well, the suit that you had in mind then was to recover what you thought the company owed you?

Same objections.

A. Yes sir, according to his statement.

Q. 299. Well, you signed the complaint in this action and swore to it.

Same objections.

A. I think so, yes sir.

Q. 300. And you realize that the complaint in this action contains a good many allegations that are not pertinent to that question?

Objected to as immaterial, irrelevant, incompetent and not proper testimony.

A. Yes.

1059 Q. 301. And you know that the demand for relief in this complaint is to enjoin the company from transacting any business, for the appointment of a receiver and for the winding up of its affairs?

Same objections.

A. That was the intention, I hope so at least.

Q. 302. When did you form a conclusion about bringing that kind of an action?

Same objections.

A. Well, I practically formed a conclusion to bring that style of action the moment I was talking to Leonard, because I looked upon him as running a fraudulent institution, by his statements, and I thought any proceedings which would bring them to a climax would be justifiable. The only question was to investigate and find out which was the better way.

Q. 303. Then you did investigate?

Same objections.

A. To the best of my ability.

Q. 304. During the two following years after your conversation with Leonard, did you determine to bring suit?

1060 Same objections.

A. I had considerable other business to attend to.

Q. 305. But you were investigating it from time to time?

Same objections.

A. I discussed it with parties who were interested, from time to time.

Q. 306. State the steps you took to investigate this company.

Same objections.

A. I corresponded with the commissioner of insurance.

Q. 307. In Minnesota?

Same objections.

A. In this State, and had several letters from him, and I had a number of interviews with different attorneys—irregular interviews with different attorneys—in this suit when I was doing their business—incidentally would discuss the matter.

Q. 308. Where did you obtain the information upon which you made the allegations contained in your bill of complaint in this case?

Objected to as incompetent, irrelevant, immaterial and not the best evidence.

A. I cannot tell.

1061 Q. 309. Do you pretend to say that the commissioner of insurance of Wisconsin gave you any information upon which you based the allegations of a fraudulent disposition of the funds of this company?

Same objections.

A. I could not tell you.

Q. 310. Haven't you any recollection?

A. No, I have letters.

Q. 311. Can you tell and will you tell where you obtained the information upon which you inserted and swore to the allegations in your complaint in this action, of mismanagement and fraudulent disposition of funds?

Same objection.

A. I swore to them to the best of my belief.

Q. 312. Where did you obtain that information?

Same objections.

A. I could not tell you.

Q. 313. Now when did you first meet Edmund D. Carter?

Same objections, as being irrelevant, incompetent and immaterial.

A. To my recollection so far as knowing the man is concerned, I think it was in Mr. Iverson's office—it may have been mine.

1062 Q. 314. When?

Same objections.

A. Well, I think it was the time we made the bond out for this case, or some affidavit or something, that he came up here in reference to—that is the first time that I knew him, or my attention was called to it afterward that he was the Mr. Carter.

Q. 315. When did you ever know any Mr. Carter with whom you discussed in any way or to any extent, the Bankers Life Association of Minnesota?

Same objections, as incompetent, irrelevant, immaterial, impertinent, for the reason that no foundation has been laid for the ques-

tion, as not admissible under the pleadings in evidence or issues in the case.

A. The first my attention was called to a Mr. Carter as connected with this matter, was in a letter that was shown to me I think by Mr. Goetz, purporting to come from Mr. Iverson, in which he wished to withdraw from the suit on account of the connection of a Mr. Carter—then I naturally asked who he was, and I was informed that it was this man that had been up at this time attending to this particular business.

1063 Q. 316. When did you first meet a Mr. Carter with whom you discussed the affairs to any extent of the Bankers Life Association of Minnesota—when did you first meet a Mr. Carter with whom you to any extent discussed the affairs of the Bankers Life Association of Minnesota?

Same objections.

A. I have no recollection of ever meeting a Mr. Carter and discussing the matter of the Bankers Life of Minnesota, knowing that his name was Carter, or any other name.

Q. 317. Have you ever seen a man whom you now recognize as Mr. Carter?

Same objections.

A. I have not seen him since.

Q. 318. Since you saw him in Mr. Iversen's office?

Same objections.

A. Yes, I saw him once—it might have been the same time.

Q. 319. When you saw Mr. Carter in Mr. Iversen's office, did you recognize him as the man you had previously conversed with concerning the Bankers Life Association?

Same objections.

A. I did not.

1064 Q. 320. Having seen Mr. Carter now, I will ask you whether, prior to the time you met him in Iversen's office, you ever held a conversation with him in relation to the affairs of the Bankers Life Association of Minnesota.

Same objections.

A. Not knowing him as Mr. Carter.

Q. 321. At that time.

Same objections.

A. Possibly—there must have been a hundred or so that were in my store that spoke about the Bankers Life and the possibility is he might, as I have since understood that he resided here and represented that company—it may possibly have been that he called upon

me in reference to it—but I do not recollect having any conversation with the man himself, knowing him as Mr. Carter.

Q. 322. Did anyone ever tell you that Edmund D. Carter ever represented the Bankers Life Association of Minnesota?

Same objections.

A. Well I understood indirectly that he lived here and represented the company—I do not know of my own knowledge, but I understood he resided here some time or other and repre-
1065 sented the Bankers Life—I think so.

Q. 323. When did you learn that?

Same objections.

A. Well, I don't know—I could not say—I got that impression some way—I may be mistaken in that—I do not know it of my own knowledge.

Q. 324. You know from what you have heard since the commencement of this suit that Edmund D. Carter has for years been trying to wreck it, do you not?

Same objections.

A. I do not know.

Q. 325. Your attorneys have not told you that it has been so charged?

Same objections and for the reason that it has not been charged.

A. No. My conversation with my attorneys in reference to Carter was only in connection with that letter shown to me, purporting to come from Iversen, in which he withdrew from the case on account of his dislike to this man Carter—I naturally asked who this man Carter was and what he was etc.

Q. 326. And after you met Carter and knew all about it, to
1066 the best of your knowledge you have no recollection of ever talking with Carter?

Same objections.

A. Not as Carter—he may have talked to me—I do not remember the man.

Q. 327. Now your attention is called to Mr. Carter, you do not remember of ever having talked to him without knowing what his name was?

Same objections.

A. No.

Q. 328. Never remember of having any conversation with him?

Same objections.

A. Never remembered the man—I may have talked to him 50

times, but I never recollected the man until my attention was called to him.

Q. 329. Then I take it Mr. Wright you were the man who instituted this suit and were responsible for it?

Same objections.

A. I do not say so.

Q. Well, who was then?

1067 Objected to as immaterial, incompetent and not the best evidence and for the reason that no foundation has been laid for the question.

A. Well, I don't know—there were others as enthusiastic as I was, as far as that is concerned.

Q. 331. Did they request you to bring this suit?

Objected to for the same reasons.

A. Well, I do not know hardly as to that—the matter was talked over a number of times.

Q. 332. When was the last time before this suit was brought?

Same objections.

A. I could not tell you that—I kept no memorandum.

Q. 333. Did Mr. Iverson come to you and ask you to join him in a suit?

Same objections.

A. I do not think so—I had very little conversation with Mr. Iverson.

Q. 334. You went to Mr. Iverson and asked him to join in a suit?

Same objections.

A. I did not.

1068 Q. 335. Well, after your conclusion to bring this suit, who did you first go to to institute the proceedings—take steps towards the institution of the proceedings?

Same objections.

A. Well, I think my first conversation—I did not go to anybody, but I think my first conversation was with Mr. Goetz—that is the present attorneys—that is my recollection.

Q. 336. Where was that held?

Same objections.

A. Well, I could not say.

Q. 337. Was it in Chicago or Milwaukee?

Same objections.

A. Oh, it was in Milwaukee.
Q. 338. When was that?

Same objections.

A. Previous to the commencement of the suit but just when I could not tell.
Q. 339. Was it in the year 1901?

Same objections.

A. I do not know when the suit was commenced.
Q. 340. Suit was commenced last October?

Same objections.

1069 A. I cannot recollect it, only just as you say so.
Q. 341. Well, it was last October.

Same objections.

A. Well, it was previous to that time.
Q. 342. How long?

Same objections.

A. I could not say.
Q. 343. What year?

Same objections.

A. I could not tell you.
Q. 344. You have brooded over this subject considerably, haven't you during the last few years?

Same objections.

A. No sir.
Q. 345. The matter you considered of a good deal of importance and resolved two years before suit was commenced, to commence it?

Same objections.

A. There are several things more important than that that take my attention.
1070 Q. 346. You did not think it was an important matter?

Motion made to strike out the answers of the witness as foreign to the issues and as collateral merely.

A. No sir. I thought it was all right—I looked upon them as a set off—they were not straight and I thought they ought to be closed up—that was my opinion.
Q. 347. Did you ever make any inquiries around St. Paul as to the character of the men who were managing the affairs of the Minnesota Life Insurance Company and the Bankers Life Association?

Same objections.

A. I inquired of the special agent, and he said I had $130 odd dollars and I could not get it unless I would take a policy on the new plan.

Q. 348. Did you ever make any inquiries in St. Paul and in Minnesota concerning the reputation and standing of the men managing the Bankers Life?

Same objections.

A. No sir—my opinion I got from their general agent.

Q. 349. Which agent was that?

Same objections.

A. Mr. Leonard.

1071 Q. 350. What did he tell you about these managers of the company?

Same objections.

A. He told me that if I did not take out a new policy that I should lose the 130 odd dollars that I had in there; that if I did I would be entitled to a credit of that amount; that it belonged to me and if I continued the present style of insurance they would freeze me out, that they would take the desirable risks out and leave just the old ones and make it so that I would be glad to get out.

Q. 351. Did you ever communicate by letter directly to the company complaining of the representations of Mr. Leonard and asking as to the true conditions?

Same objections.

A. He showed me his card, signed and printed etc., and a statement as the manager of the Bankers Life of the State of Minnesota for the State of Wisconsin.

Q. 352. You knew who the president, trustees and secretary were, did you not?

Same objections.

A. Yes, and I knew who the manager was.

Q. 353. Who was the manager?

Same objections.

1072 A. Mr. Leonard.

Q. 354. You knew that only from what he told you?

Same objections.

A. He brought his credentials.

Q. 355. What?

Same objections.

A. He gave me his card and gave me a statement even as to the number of my policy and how long it had run.

Q. 356. You took him to be manager of the company, overriding trustees and officers, is that it?

Same objections.

A. I took the papers he presented—the credentials.

Q. 357. Now to get back to the original question: Did you make any application to the company direct at his home office, by letter or otherwise, for a true statement as to your rights and conditions of the company, and what the company was doing, or the purposes of it?

Same objections.

A. I did not because I had it.

Q. 358. From whom?

Same objections.

A. From this Leonard.

1073 Q. 359. You had it only from him as you have testified?

Same objections.

A. Yes, sir, he brought me a written statement and gave it to me.

Q. 360. Now you cannot state within a year of the time when you talked with Mr. Goetz before bringing this suit?

Same objections.

A. Well, I cannot—I have no memorandum to tell.

Q. 361. You could not tell whether it was a year or a month or three months or six months?

Same objections.

A. I know we commenced the suit, but just how long it was before that he talked to me I could not say.

Q. 362. I did not ask you just about what time, I asked you whether you can say that it was a month, three months, six months or a year.

Same objections.

A. It is immaterial because it would be a guess on my part.

Q. 363. Answer the question to the best of your recollection.

Same objections.

Mr. DILLON: This is all immaterial.

1074 A. My answer would be of no value because I might find it was three to eight months out of the way.

Mr. PALMER:

Q. 365. Do you decline to give us the best of your recollection?

Same objections.

A. It was previous to the time of the commencement of the suit, probably, I should judge, from the dates, from the letters one in the latter part of 1901 and the other the middle of 1900—I should say it was some time between those two dates.

Q. 366. Between what dates?

Same objections.

A. The dates of the letters you speak of.

Q. 367. It was undoubtedly between December 1900 and the time of the commencement of the suit?

Same objections.

A. It was between the date of the letter June 1900 and the time of the commencement of the suit—that is about a year.

Q. 368. You cannot get any nearer than that?

Same objections.

A. That is the nearest I can get at the present time.

Q. 369. How many conversations did you have with Mr.
1075 Goetz concerning it and before the commencement of the suit?

Same objections.

A. I could not tell you—two or three probably.

Q. 370. You say "probably," what is your best recollection?

Same objections.

A. I should say about two or three.

Q. 371. At about what intervals?

Same objections.

A. These are all guesses.

Mr. DILLON: I submit this is all immaterial, irrelevant and impertinent and that no foundation has been laid for it, and such evidence as it is improper to have go before the court, and it is not necessary for the witness to answer.

Mr. PALMER:

Q. 372-3. At what intervals, Mr. Wright?

Same objections.

A. Well, they would be a few weeks apart, one or two—might be only a week—might be a month—I have no way by which I could fix it now.

Q. 374. How long before the commencement of this suit did you last talk with Mr. Goetz?

1076 Same objections.

A. I could not tell.

Q. 375. Not approximately?

Same objections.

A. No sir.

Q. 376. Whether it was one month or two or three months or more?

Same objections.

A. Well, no, I could not—I suppose the dates of the instruments would show what time they were executed—that was the last time I saw him before it was commenced—it would be the dating of the instruments themselves.

Q. 377. Did you go to Mr. Goetz or he come to you, when the first interview was had?

Objected to for the same reasons and for the reason that the papers themselves in the case are sufficient to establish the matters sought to be established by the counsel.

A. He came to me—I never was in his office—I have never been to Chicago—that is, I have never been in his office in Chicago.

Q. 378. Who introduced the subject of the Bankers Life
1077 Association—you or Mr. Goetz?

Same objections.

A. Well, I think Mr. Goetz—we had some other business together and I think it was Mr. Goetz.

Q 379. Did he appear to have knowledge of the Bankers Life Association?

Same objections.

A. I presume so, yes.

Q. 380. Did he suggest to you the idea of bringing a suit to wind up its affairs?

Same objections.

(No answer.)

Q. 381. And told you they had some other parties in Chicago?

Same objection.

A. I have forgotten as to that—I told him I was ready—if any of the rest were ready I was ready to go in—he could count on me—that may have been some months before that I told him that.

Q. 382. And you furnished Mr. Goetz with the information upon which this complaint was drawn?

Same objections.

1078 A. I do not say so.

Q. 383. Did you furnish it to him?

Same objections.

A. I cannot say what I told him.
Q. 384. To the best of your recollection?

Same objections.

A. I told him all I knew, but what I knew at that time I do not know.
Q. 385. Have you forgotten it by this time?

Same objections.

A. I have nothing here to refresh my memory.
Q. 386. What did you have to refresh your memory with at that time?

Same objections.

A. All my papers in connection with the matter.
Q. 387. You had papers that bore out all the statements that you made in the complaint, or are made there?

Same objections.

A. I do not say so—I retained all the papers that I received from that corporation—from the time I went in—nearly all of them, so far as I know.

Q. 388. Now I want to give you every latitude here, Mr.
1079 Wright: You swore to that complaint based upon facts which you had in your possession, didn't you?

Same objections.

A. I swore to that complaint based on the facts, so far as I knew, and upon my information and belief—I have not changed it either, since.
Q. 389. No, I do not expect you will until something falls.
(No answer.)
Q. 390. Did you apply to the insurance commissioner of Minnesota for any statements or information concerning this defendant company, before you commenced this suit?

Objected to as immaterial, incompetent, irrelevant and inadmissible under the pleadings.

A. No sir—I lived in Wisconsin.
Q. 391. Mr. Wright, you read the bill of complaint in this action carefully before you signed and swore to it, did you not?

Same objections.

A. Anything that I swore to I certainly read.
Q. 392. Did you find any allegations contained in that bill of complaint on information and belief, or which purported to be based upon information and belief?

Same objections.

1080 A. What is that?

Q. 393. I asked you if you found any allegations in that bill of complaint that purported to be made upon information and belief, or otherwise that as a positive statement of facts?

Same objections, and for the reason that the bill is the best evidence.

A. Of course I do not recollect now just how it is written.

Q. 394. I want to call your attention to the oath that you made to that complaint.

Same objections.

"Samuel Wright on oath states that he is one of the complainants of the foregoing bill named, and the holder of membership certificates numbered 16068 and 16069, and has heard the same read and knows the contents thereof; that the matters and things in said bill of complaint contained are true of his own knowledge except as to those matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true."

Q. 395-6. Now, if there are no matters in the bill of complaint stated upon information and belief, you still say that the statements contained in that bill are true?

Same objections.

1081 A. Things that I stated were true in there—I still say so.

Q. 397. When did you first meet Mr. J. C. Iverson and converse with him in relation to the defendant company?

Same objections.

A. Well, I have no recollection of having very much conversation with Mr. Iverson.

Q. 398. That is not the question. Question 397 reread.

Same objections.

A. I cannot tell just exactly—I do not think I had any conversation with him about it previous to the commencement of the suit—I do not recollect it at the present time.

Q. 399. You have no recollection of talking with Mr. Iverson previous to the commencement of the suit?

A. I may have but I do not recall just what it was—I do not recall it at the present time.

Q. 400. And you did not consult together before commencing a suit, you and Mr. Iverson?

Same objections.

A. I do not recall now whether we did or not—may have done so, but I do not recall the facts now.

Q. 401. You say you met Mr. Carter for the first time in

1082 Mr. Iverson's office?

Same objections.

A. I did not say anything of the kind.
Q. 402. Well, when he brought you some paper to sign?

Same objections.

A. No, I did not say so—I said my attention was first called to the fact that his name was Carter—I may have seen him before.
Q. 403. Well, that is the only time that you recollect of having seen him was, when he brought some paper to you?

Same objections.

A. Yes.
Q. 404. Some papers in this suit?
A. Yes sir.
Q. 405. Now when do you first recollect of having seen and conversed with Mr. Iverson?

Same objections.

A. The first time that I saw and conversed with him?
Q. 406. Yes sir, in relation to this suit or proposed suit.
A. I could not say—I do not recollect conversing with him
1083 except possibly in relation to some affidavit or bond or something of that kind—previous conversations I do not recollect.
Q. 407. Where was that?

Same objections, as immaterial, incompetent, irrelevant, for the reason that no foundation has been laid and as not being admissible under the pleadings in this case.

A. I think it was in his store—whether that was the first or not I do not know—I could not recall.
Q. 408. That was with reference to a bond as security for costs in this case, was it not?

Same objections.

A. Possibly—I do not recall the others—I recall that meeting.
Q. 409. I say, you do remember of meeting him in his store in relation to that matter?

Same objections.

A. Yes sir.
Q. 410. Did anyone go with you to Iverson at that time?

Same objections.

A. Yes—the fellow—I do not recall his name—some fellow that executed the bond—a man I am not personally acquainted with.
1084 Q. 411. Why did you take him to Mr. Iverson?

Same objections.

A. I did not take him—he called for me—I think he called for me to go over to Iverson's or else I was telephoned to go over there—whether we went there together, I do not know—anyway we met there—I don't remember just what the facts were.

Q. 412. Then you never discussed the merits of the case at all with Mr. Iverson?

Same objections.

A. Well, I would not say that—I think we did.

Q. 413. When?

Same objections.

A. That I cannot say.

Q. 414. Was it before or after the commencement of the suit?

Same objections.

A. I know we discussed it afterwards, but I do not recall whether I had any conversation with him before or not.

Q. 415. After hearing Mr. Iverson's complaint about Mr. Carter's being mixed up in the suit and his refusal to go on with it,
1085 did you make inquiries of Dillon & Goetz as to whether Mr. Carter actually did have anything to do with the suit?

Same objections.

A. I asked who Carter was and I was told that he was the fellow that was up previously with this bond, or something of that kind; that he was formerly an insurance man here in the city.

Q. 416. Up with what bond?

Same objections.

A. I say this bond or affidavit that you have just referred to.

Q. 417. He went with you to Iverson, did he not?

Same objections.

A. No, I do not think so—I think he telephoned for me or somebody telephoned for me to come over there—I think the bond was executed any way there at Iverson's—or the affidavit signed—whatever it was—that is my recollection.

Q. 418. As a matter of fact the bond was never signed by either you or Mr. Iverson?

Same objections.

A. I don't know—I think it was—the records will show as to that.

1086 Q. 419. Do you recollect when you retained Dillon & Goetz to commence this suit?

Same objections.

A. No, I could not tell you—I just stated I could not give the date.

Q. 420. Can you not tell how long before the suit was commenced?

Same objections.

A. Between those two dates I have mentioned.

Q. 421. But you cannot get any nearer than that—between June 1900 and the commencement of the suit?

Same objections.

A. I know I authorized them and that is all I know.

Q. 422. When did you authorize them?

Same objections.

A. I could not say as to that.

Q. 423. Here in Milwaukee or Chicago?

Same objections.

A. Here in Milwaukee.

Q. 424. When did you retain John F. Byers of Minneapolis as counsel in the case?

Same objections.

1087 A. I had nothing to do with that—I do not know.

Q. 425. Mr. Wright, a circular letter was sent out to the members of this company purporting to be signed by J. C. Iverson and Samuel Wright, bearing date October 12th, 1901, requesting them to join in these suits: I will ask you whether you signed any circular of that kind?

Objected to as not the best evidence, also as immaterial, irrelevant and impertinent and for the reason that no foundation has been laid for the question.

A. Well, just exactly as to that I cannot say—I had some conversation with Mr. Goetz, a suggestion of a circular—whether I signed it or not I cannot say—but they were authorized to do it.

Q. 426. They were authorized to sign it?

Same objections.

A. Yes.

Q. 427. I call your attention to Defendants' Exhibit 24 and ask you if that is one of the circulars which you authorized them to send out?

Same objections.

A. I could not say as to that.

Q. 428. Just read that and state whether that is the sub-
1088 stance of the circular that you authorized them to send out.

Same objections.

A. Well, I could not say whether this is an exact copy or whether it is not—I know there was a circular sent out.

Q. 428½. Addressed to the members?

Same objections.

A. To the members, yes—sure—they would not be addressed to anybody but members.

Q. 429. And in your conversation with Mr. Goetz what was the object to be obtained by sending out this circular?

Same objections.

A. Why, to get our money out of it.

Q. 430. Did you expect the members to pay you the money?

Same objections.

A. No, sir, expected the officers of the company to disgorge.

Q. 431. You expected the officers of the company to disgorge?

Same objections.

A. Yes.

Q. 432. How would they "disgorge" by your sending out a circular to the members?

Same objections, also that there is no occasion for the argu-
1089 mentation of the counsel with the witness, and for the reason that the questions are very leading and all impertinent and inadmissible.

A. The idea was to commence a suit by a number of the members uniting—by so doing, why, we would save the expense of one person.

Q. 433. The suit had already been commenced when this circular was sent out, had it not?

Same objections.

A. I believe so, yes sir.

Q. 434. And the idea of sending out this circular was to induce other members to join, was it not?

Same objections.

A. To divide the expense.

Q. 435. You wanted to bring in other members?

Same objections.

A. I had 130 odd dollars in there and probably there were others that had the same amount, or some amount, and by joining it would reduce the cost.

Q. 436. Let me read this Exhibit 24 to you.

Same objections.

"MILWAUKEE, WIS., *October* 12, 1901.

To the members of the Minnesota Mutual Life Ins. Co., for-
1090 merly the Bankers Life Association of Minnesota.

DEAR SIRS: At the instigation and request of a great many policy holders we have brought suit in the United States circuit court at St. Paul, Minnesota, against the above named company on behalf of ourselves and all others who*l* will join us, asking for the appointment of a receiver to wind up its affairs according to law, on the grounds of gross and fraudulent mismanagement in changing its plans and perverting its funds. This was deemed the only means by which our mutual interests therein could be in the least degree preserved.

Whether your policy is in force at the present time or not you are proportionately interested with us in the proper distribution of its funds yet remaining and hence we ask your coöperation.

Please therefore sign the enclosed slip authorizing our attorneys, Dillon & Goetz, Masonic temple, Chicago, Ills., and our counsel, John F. Byers, Lumber Exchange building, Minneapolis, Minn.,
1091 to represent you that your interests may be equally protected with our own, and mail same at once to attorneys or counselor as per addresses above given.

Trusting you will act prom-tly in this matter, as it is of utmost importance, we remain,

Yours truly,

J. C. IVERSON.
SAMUEL WRIGHT."

Q. 437. Now that is the circular which you authorized Mr. Goetz to send out?

Same objections.

A. I believe I agreed to it—I would not say that that is the exact wording.

Q. 438. Substantially.

Same objections.

A. Yes, there is nothing wrong with it—it is certainly in keeping with my ideas.

Q. 439. Now to go back again, let me call your attention to some portions:

"At the instigation and request of a great many policy
1092 holders we have brought suit in the United States circuit court at St. Paul, Minnesota," is that statement true?

Same objections.

A. Practically, yes.

Q. 440. Do you say that this suit was instituted at the "instigation and request" of a great many policy holders?

Same objections.

A. Well, we had decided—quite a number of us—to commence an action.

Q. 441. Do you say that this particular suit was instituted at the instigation and request of a great many policy holders?

Same objections.

A. This particular suit?

Q. 442. The particular suit that is now pending in the United States circuit court at Minnesota.

Objected to as before.

A. That suit is the outgrowth of the ideas of the different policy holders.

Q. 443. Will you give me the name of a single member of the Bankers Life Association that instigated and requested you
1093 to institute that suit?

Same objections.

A. Well, I could give you myself.

Q. 444–5. Well, outside of yourself, can you give us a single one?

Same objections.

A. I know we had meetings and it was decided.

Q. 446. When?

Same objections.

A. Possibly the gentlemen here can give you a list of them better than I can—I have no list.

Q. 447. We know all about that list.

Same objections.

WITNESS: Then you need not ask me, because I don't know.

Mr. DILLON: I submit that this is all impertinent to the issues, and that the witness is not compelled to answer.

Mr. PALMER:

Q. 448. I ask you to give the name of a single policy holder of the Bankers Life Association of Minnesota, or the Minnesota Mutual Life Insurance Company, who instigated you or requested
1094 you to bring this suit that is now pending, other than yourself.

Same objections.

A. My attorneys probably have the list—I have not.

Q. 449. Have you a list?

Same objections.

A. No sir.
Q. 4450. Did you ever have one?

Same objections.

A. No, I cannot say that I ever did.
Q. 451. Do you know anything about it except as your attorneys told you?

Same objections.

A. Well, I left it pretty much to them.
Q. 452. So that if there was any list they have it?

Same objections.

A. When I have an attorney I rely on him.
Q. 453. You relied on their representations in making this list?

Same objections.

A. I always rely on my attorneys.
Q. 454. And all you knew about there being others who wanted this suit commenced was what your attorneys told you?

Same objections.

A. Oh, no.

1095 Q. 455. Well, what did you know about anybody's requesting you to bring this suit, any member?

Same objections.

A. We had different meetings at different times and discussed it several times.
Q. 456. Can you give me the name of any member that you know of your own personal knowledge that requested you to bring this particular suit?

Same objections.

A. This was the outgrowth of the different meetings we had.
Q. 457. Can you tell the name of your own knowledge of a single member that requested you to bring this particular lawsuit?

Same objections.

A. Why, if there were 500 in those meetings I could not tell any particular one that called for this particular identical suit to be begun—this is consummated from the meetings that we had in which it was decided to commence an action.
Q. 458. Then, there was no meeting that you recall subsequently to June, 1900?

Same objections.

1096 A. Well, I think there were some—oh, yes—subsequent to 1900?

Q. 496. Yes. I tried to have you tell all the interviews you had.

Same objections.

A. There may have been meetings during 1900, but when they commenced I cannot tell—I do not know the date of the meeting you spoke of.

Q. 460. Did you attend any meeting of members subsequently to the summer of 1900?

Same objections.

A. I could not say—as I stated before I cannot give you the dates.

Q. 461. Where did you get this idea that members requested you to bring this suit?

Same objections.

A. I do not remember the meeting—the date of that particular meeting that you spoke of.

Q. 462. Did you furnish your attorneys with a list of members who had requested you to bring this suit?

Same objections.

1097 A. I believe I told them that there were parties who felt as I did, and referred them to them.

Q. 463. Were there any outside of the city of Milwaukee?

Same objections.

A. I think there were.

Q. 464. Whereabouts.

Same objections.

A. I think there was one in Platteville—one or two—there were one or two I know that I referred them to outside.

Q. 465. That is all?

Same objections.

A. That is all that I remember at the present time—I told them every one I could think of.

Q. 466. Six or eight months ago—when this suit was commenced?

Same objections.

A. In 1900 the matter was discussed.

Q. 467. You told them that you remembered there were some persons that attended the meeting in 1900?

Same objections.

A. Told them all I knew.

Q. 468. And you told them if they corresponded they might

1098 consent to come in?

Same objections.

A. I gave them all the information I had.

Q. 469. When you signed this circular letter of October 12, did you have yourself, or did your attorney show you the name of any member of the Bankers Life Association who had agreed to come into this suit or had requested the beginning of it? I am talking of prior to the commencement of the suit.

Same objections.

A. I could not say—I have no recollection of the details.

Q. 470. Did you ever see the power of attorney that you requested the members to sign, that was enclosed with Exhibit 24?

Same objections.

A. I probably did—probably signed one.

Q. 471. Let me call your attention to Defendants' Exhibit 25 and ask you if in your opinion that is one of the forms of the powers of attorney that was enclosed with these circulars?

(Witness examines Exhibit 25)

Same objections.

1099 A. Oh, probably yes—I could not say now—it is a matter of record—I signed one I don't remember.

Q. 472. Did you sign one that had the $3 limit on the back of it, as to costs?

Same objections.

A. I do not recollect—that was a matter that I left to my attorney and I did not pay much attention to it.

Q. 473. When did you first make Mr. Goetz's acquaintance?

Same objections.

A. Well, I don't remember—it must have been probably in 1899.

Q. 474. Was it prior to this first interview with him that you have recalled?

Same objections.

A. It was before this Bankers Life trouble occurred—I was a member at the time of the Bankers Association.

Q. 475. At the time you first met him?

Same objections.

A. Yes.

Q. 476. When did you first meet Mr. Dillon?

Same objections.

A. I do not think I met Mr. Dillon until recently.

1100 Q. 477. Until perhaps when your deposition was taken?

Same objections.

A. I think so—that is my recollection.

Q. 478. Did you ever go to Mr. Iverson's or converse with Mr. Iverson in the presence of Mr. Goetz or Mr. Dillon or Mr. Carter?

Same objections.

A. Well, I had some conversation—I do not recall—I supposed I had—yes.

Q. 479. With which one of them?

Same objections.

A. Well, not with Mr. Dillon, because I do not think I ever met Mr. Dillon——

Q. 480. Well, with Mr. Carter, Mr. Goetz or both of them?

Same objections.

A. Well, with Mr. Goetz.

Q. 481. Did you ever converse with Mr. Carter?

Same objections.

A. Well, at this time that I speak of——

Q. 482. That is when he came to have the affidavit signed?

Same objections.

1101 A. Some affidavit, bond or whatever it was; that was Mr. Carter I believe—that was some little conversation—just what it was I do not recall now—but the matter was attended to satisfactorily and quickly.

Cross-examination waived.

SAM'L WRIGHT.

1102 J. C. IVERSON being first cautioned and sworn testified as follows:

Examined by Mr. MITCHELL:

Q. 483. What is your full name?

A. John C. Iversen.

Q. 484. Where do you reside?

A. Milwaukee.

Q. 485. What business are you in, Mr. Iverson?

A. Merchant and manufacturer.

Q. 486. Are you a member of the Minnesota Mutual Life Insurance Company?

A. I am.

Q. 487. You hold a certificate on the assessment plan or what was called the guaranteed option plan?

A. On the assessment plan.

Q. 488. How long have you been a member?

A. Since 1888.

Q. 489. Are you the Mr. Iverson who was at one time party plaintiff in this suit and afterwards withdrew?

A. I am.

1103 Q. 490. State whether or not any person ever came to see you about the institution of this suit?

A. Yes sir.

Q. 491. Who was it?

Objected to as being incompetent, irrelevant, immaterial and for the reason that no foundation was laid for the question.

Question withdrawn.

Q. 492. State who the first person was?

Objected to as being incompetent, irrelevant and immaterial and for the reason that no foundation has been laid for the question.

A. I am not sure who the first person was, whether it was a man by the name of Carter or Mr. Goetz—I am not positive as regards that.

Q. 493. Can you state positively when that first interview occurred?

Objected to for the same reasons and also as being hearsay evidence.

A. It must have been some time in August or September 1901.

Q. 494. State what took place at the first interview that

1104 you ever had with either of these gentlemen.

Objected to for the same reasons.

A. Why, whoever it was the gentleman came into my office and commenced to speak to me about the Minnesota Mutual Life Insurance Company and about various other things, and I had just a week or ten days previous to that—a man purporting to be a representative of the company had come to me and told me that if I would not take a new option policy or the new policy, that I would be froze out, put out of the company, etc., and I was pretty well wrangled under the collar at the time; so when the gentleman came in I commenced to talk with him—he went off after a short time.

Q. 495. Did Mr. Carter—Edmund D. Carter, ever come to see you prior to the institution of the suit?

Same objections.

A. I do not know whether Mr. Carter came into the store, whether Mr. Carter was the first man that saw me in regard to this matter, or whether it was the time the bond was signed—I did not know him in either case—I did not know Mr. Carter was in the store at the time the bond was signed, for I do not know Mr. Carter

1105 personally—I know of his reputation but not personally—the only time I ever saw that man was one time when I went

up to a meeting in the University building, and then I only looked in the door and somebody standing in the door says to me, There is Carter, and then I turned around and walked off.

Q. 496. Did either of these gentlemen that came to see you ask you to become a party to this suit?

Same objections.

A. Yes sir.

Q. 497. State whether or not Mr. Goetz ever asked you to become a party to this suit?

Same objections and as leading.

A. Yes sir, he did.

Q. 497. Did Mr. Goetz ever act as your attorney prior to the commencement of this suit?

Same objections.

A. Never has.

Q. 498. State whether or not he went to see you at your invitation?

A. He did not—he came of his own free will—I did not
1106 invite him to come at all.

Q. 499. I call your attention to Defendants' Exhibit 24 purporting to be a circular letter directed to the members of the Minnesota Mutual Life Insurance Company, asking them to become parties to a suit, which purports to be issued under your name and that of Mr. Samuel Wright: State whether or not you ever authorized Messrs. Dillon & Goetz to issue such a letter?

Same objections.

A. To my knowledge I never authorized them to send a letter nor to sign my name to that letter.

Q. 500. Did you ever sign an original of that letter?

Same objections.

A. I do not believe I did.

Q. 501. Did you ever authorize any other person to issue such a letter?

Same objections.

A. No sir, I did not.

Q. 502. State when you first knew that such a circular letter had been issued?

Same objections.

1107 A. Why, to all appearance after October 12 when I received this letter.

(Indicating letter marked Exhibit 33)

Q. 503. I call your attention to Defendants' Exhibit 33 and ask you to state what that is.

Same objections.

A. That is a letter from Dillon & Goetz to J. C. Iverson, Milwaukee.

Q. 504. How did you receive that letter?

Same objections.

A. By mail.

Q. 505. Were there any enclosures in that letter at the time it was received?

Same objections.

A. Yes sir, there was the paper marked Defendants' Exhibit 34.

Q. 506. Can you state about when you received that letter Exhibit 33?

Same objections.

A. I may have received it October 13th or 14th—it generally takes a day from Chicago to get a letter up here—sometimes
1108 only a few hours—it may have come the same day for all I know.

Q. 507. State whether or not that letter was the first knowledge you had of the issuance of this circular, Exhibit 34?

Same objections, and also objected to as leading and the objection as leading is made to all these questions, and also as speaking about something here that is not in evidence.

(No answer.)

Q. 508. Do you recollect whether you made any reply to that letter?

Same objections.

A. No sir, I do not think I did.

Mr. MITCHELL: We offer in evidence Defendants' Exhibits 33 and 34.

Those two Exhibits 33 and 34 are objected to as being immaterial, incompetent, irrelevant, impertinent, also for the reason that no foundation has been laid for them, as *ex parte* evidence, and as being privileged communications between attorney and client.

Mr. MITCHELL: Will you admit that that is the handwrit-
1109 ing of Mr. Goetz?

Mr. DILLON: No, we do not admit anything.

The letters are as follows:

1110 DEFENDANTS' EXHIBIT 33. H. D. G., Notary.

Walter S. Dillon. Albert Goetz.

Dillon & Goetz, attorneys and counselors, Masonic temple, suite 1510.

Telephone central 3381.

CHICAGO, *October* 12, 1901.

John C. Iverson, Esq., Milwaukee, Wis.

DEAR SIR: We have filed the bill in the Bankers Life Ass'n matter in the United States court at Saint Paul Minn. and will follow it up with all the energy and ability at our command.

We felt it exceedingly necessary and in keeping with the bill itself that we issue the enclosed circular letter at once and
1111 mail to all members which no doubt will cause some correspondence and would therefore ask you to kindly refer all inquiries and communications you may receive in this matter to us and we will take care of same.

We will keep you fully informed from time to time of the progress in the case.

Yours very truly, DILLON & GOETZ.

Mr. Byers has been retained by us to watch the case at Saint Paul and act as counsel with us in the matter.

DILLON & GOETZ.

1112 DEFENDANTS' EXHIBIT 34. H. D. G., Notary.

MILWAUKEE, WIS., *Oct.* 12, 1901.

To the members of the Minnesota Mutual Life Ins. Co., formerly the Bankers Life Association of Minnesota.

DEAR SIRS: At the instigation and request of a great many policy holders we have brought suit in the United States circuit court at St. Paul, Minn., against the above named company on behalf of ourselves and all others who will join us asking for the appointment of a receiver to wind up its affairs according to law, on the grounds of gross and fraudulent mismanagement in changing its plans and perverting its funds. This was deemed the only means by which our mutual interests therein could be in the least degree preserved.

Whether your policy is in force at the present time or not
1113 you are proportionately interested with us in the proper distribution of its funds yet remaining and hence we ask

your co-operation. Please, therefore, sign the enclosed slip authorizing our attorneys, Dillon & Goetz, Masonic temple, Chicago, Ill., and our counsel, John F. Byers, Lumber Exchange building, Minneapolis, Minn., to represent you that your interests may be equally protected with our own and mail same at once to attorneys or counselor as per addresses above given.

Trusting you will act promptly in this matter as it is of utmost importance, we remain,

Yours truly,

J. C. IVERSON.
SAMUEL WRIGHT.

1114 Mr. MITCHELL:

Q. 509. I will call your attention to the first clause in this circular letter marked Exhibit 34, which reads as follows: "At the instigation and request of a great many policy holders we have brought suit in the United States circuit court at St. Paul Minnesota against the above named company on behalf of ourselves and all others who will join us, asking for the appointment of a receiver to wind up its affairs according to law, on the ground of gross and fraudulent mismanagement in changing its plans and perverting its funds" and ask you to state whether or not any policy holder of this company had requested you to institute this suit?

Same objections.

A. No.

Q. 510. Had any member of the company ever been to you and asked you to institute these proceedings?

Same objections.

A. No sir.

Q. 511. State whether or not Mr. Carter or Mr. Goetz made any statements to you or gave you any information in regard to
1115 the matters charged in the bill of complaint in this cause?

Same objections, and also that the bill itself is the best evidence.

A. Well, I do not know what the conversation was—it was twice or three times that I saw Mr. Goetz—he came in and sat down and talked probably for 15 or 20 minutes in regard to the matters pertaining to the suit and then one day he came in with the complaint and the complaint was signed by me in the store—I don't know whether Mr. Wright was present and signed it then and there, or whether he was not—I could not tell that—I was not sure—I know that the notary public came in afterwards and took my statement—swore me.

Q. 512. Did you have any personal knowledge of the truth of the allegations contained in this bill?

Same objections.

A. Not anything further than what the supposed representative of the company told me at the time when he was in the store last—what his name was I do not know and have no idea.

Q. 513. Did you ever see this supposed representative before or since that time?

1116 Same objections.

A. No, I have not.

Q. 514. Did he give you his name at that time?

A. No, I do not think that he did—he came in and said that he represented the company and wanted me to go to work and change my policy.

Q. 515. Do you know what his name was?

A. No sir, I do not know that I heard his name.

Q. 516. State whether or not you relied on the statements of Mr. Goetz or Mr. Carter as to the matter contained in the bill of complaint?

Same objections, and also as leading.

A. Entirely.

Q. 517. Had you any personal knowledge of the matters contained therein, except as given to you by your attorneys?

Same objections.

A. Nothing only what I read out of the complaint.

Q. 518. Did you ever see Mr. Esdras B. Trubey?

Same objections.

A. I did.

Q. 519. Where did that interview take place?

1117 Same objections.

A. At the store some time either at the end of January or the latter part of February.

Q. 520. Of this year?

Same objections.

A. Yes sir.

Q. 521. Was that before or after you had notified Messrs. Dillon & Goetz that you would withdraw?

Same objections.

A. That was after I had notified them.

Q. 522. What was said at that interview?

Objected to as incompetent, irrelevant, immaterial, impertinent inadmissible under the pleadings in the case *ex parte* and also as hearsay evidence.

A. Well, I had a talk with him in regard to the matter—he broached it to me and told me he wanted to speak to me about the Minnesota Mutual Life Insurance Company suit, and wanted me to stay in the suit, and I told him that I would not under any circumstances, that I had made up my mind to withdraw from it and I was bound to withdraw and I could not stay there and that was all there was to it, and I gave him the reasons why, too.

1118 Q. 523. Was there anything said about Mr. Edmund D. Carter at that interview?

Same objections.

A. Yes sir, I spoke to him about Edmund D. Carter and he told me that Edmund D. Carter had a desk in the office of Dillon & Goetz, and I told him that if Mr. Edmund D. Carter or Edmund C. Carter had an office in the office of Dillon & Goetz he undoubtedly must get some money from them or must have some contract with them in regard to this suit. He did not stay very long—it was only a matter of probably 15 minutes.

Q. 524. Did he say anything to you about whether or not Mr. Carter had ever been to see you?

Same objections.

A. No, he did not—that information I got from Mr. Goetz.

Q. 525. Did Mr. Trubey say anything to you at that interview about how he had got interested in this case?

Same objections.

A. Yes.

Q. 526. State what that conversation was.

Same objections.

A. Well, he told me that Mr. Carter had come to him first
1119 and that he had so much to do that he could not attend to the case and that he had transferred him first to another firm of lawyers and then to Messrs. Dillon & Goetz.

Q. 527. Did he state what Mr. Carter came to him for?

Same objections.

A. Yes, sir.

Q. 528. What was it?

Same objections.

A. To institute proceedings against the Minnesota Mutual Life Insurance Company.

Q. 529. Do you mean that Mr. Trubey said that Mr. Carter came to him as an attorney, or in what capacity?

Same objections.

A. No, he did not say so—he said that Mr. Carter came to him and broached the subject to him first in regard to the suit, and that he had too much to do and could not attend to it and that he referred it to some one else.

Q. 530. What did Mr. Trubey say about his business to you at that time—about his occupation?

Same objections.

A. If I am not mistaken he told me that he was an attorney.

1120 Q. 531. Well, do I understand you to mean that he said that Mr. Carter came to him—Trubey—and requested Mr. Trubey to act as his attorney in prosecuting the case?

Same objections.

A. That is what I understood.

Q. 532. You say this conversation with Mr. Trubey was after you notified your attorneys that you wanted to withdraw from the suit?

Same objections.

A. Yes sir.

Q. 533. What was the substance of Mr. Trubey's statement to you about that matter at that time?

Same objections.

A. Well, nothing particularly—he asked me not to withdraw from it and he told me that he was a member in good standing in the company and that if I would withdraw he would naturally have to take my position as one of the plaintiffs in the case.

Q. 534. Did he state what would become of the suit if you withdrew?

Same objections.

A. Well, he naturally said that if I would withdraw from

1121 the suit and nobody else would come in it would have to be dropped.

Q. 535. State whether or not he said that it was necessary for him to become a party plaintiff if you withdrew?

Same objections.

A. That is what he did.

Q. 536. State what he said.

Objected to as immaterial, incompetent, irrelevant, impertinent and for the reason that it has been answered once, and as leading and as hearsay evidence.

A. I think I have answered that once.

Q. 537. You said something in your testimony about some statement Mr. Goetz made to you about Mr. Carter.

Objected to for the same reasons.

A. Yes.

Q. 538. What was that statement and when and where was it made?

Same objections.

A. Immediately after I notified the attorneys of my withdrawal from the suit, Mr. Goetz came up and he asked me whether I know Mr. Carter personally, and I told him that I did not, that I had seen him once but I did not know him personally. Why, he
1122 says, he was the man that introduced this matter of a suit to you.

Same objections.

But I think that he is mistaken there. I think that he was the man that brought the bond to be signed—it may have been that Mr. Carter was in the store once before, but I am not positive as regards that.

Q. 539. At the time this suit was first instituted did you know whether or not Mr. Wright was a member in good standing?

Same objections.

A. I did not—I found that out later that he was not—I did not know at the time.

Motion made by complainants' counsel that the last part of the answer be stricken out as not the best evidence and as no answer at all.

Q. 540. Did you ever ask Mr. Wright to institute this suit?

Same objections.

A. I did not.

Q. 541. State whether or not Mr. Wright ever came to you in regard to the matter?

A. No, Mr. Wright did not come to me in regard to the matter.

1123 Q. 542. State whether or not you had determined to commence a suit against the company before these parties came and suggested it to you?

Same objections.

A. No sir, I had no inclination at all.

Q. 543. State whether or not you became a party as the result of their solicitation?

Same objections.

A. I did.

Q. 544. State whether or not the first person who came to see you

about the institution of this suit came as the representative of any firm of attorneys.

Same objections.

A. Came as the representative of Dillon & Goetz—laid his card down on the table or on the desk.

Q. 545. Did Mr. Goetz ever say anything to you about whether Mr. Carter was employed in his office?

Same objections.

A. No, he did not—when he came up January 21st and I told him that I wanted nothing to do with the suit if Mr. Carter had any interest in it, because I considered him nothing but a common
1124 ordinary blackmailer—I said that I understood Mr. Carter had a desk in the office, and in fact was a member of the firm—he told me that he was not and never had received a cent of money from them and that all that they had given him was desk room.

Motion made by plaintiff's counsel to strike out the answer as not responsive to the question.

Q. 546. Did you arrange for the execution of the bond for costs in this case?

Same objections.

A. I did not.

Q. 547. Who did that?

A. I am sure I don't know—the party came into the store and brought Mr. Coates, the representative of the company along with him, and a short time afterwards, or immediately afterwards—I don't know how long afterwards—Mr. Wright came in, and the application was signed tight in the office, for the bond.

1125 Cross-examination.

By Mr. DILLON:

X Q. 548. It was Mr. Goetz, was it not, that called on you first in this case?

A. I am not sure whether it was Mr. Goetz or who it was, but I think it was Mr. Goetz—but I am not positive.

X Q. 549. You signed some power of attorney that day, did you not?

A. I do not know whether I signed anything—I am not sure.

X Q. 550. You told him at any rate that agents of this Bankers Life Company had been bothering you, soliciting you from time to time?

A. Yes.

X Q. 551-2. That they had told you that they intended to freeze you out and compel you to take this new plan?

A. Yes.

X Q. 553. And you told him you believed the company was rotten, didn't you—the trustees?

A. May be I did under the circumstances, yes.

X Q. 554. And did you not tell Mr. Goetz that you intended to stay with them and commence suit against them?

A. No, I did not—I do not know that I did—I do not be-
1126 lieve I did.

X Q. —. Did you not tell them that you intended to stay with them as long as they existed and see that you would get your money out of it?

A. No, I do not think so.

X Q. 556. Something like that?

A. No, I do not think so.

X Q. 557. Don't you say that you had been consulting your own attorney, or intended to, immediately?

A. No sir, I did not.

X Q. 558. Now Mr. Iverson, in regard to this circular, you say you never answered that letter which is referred to here (Exhibit 34)—you never disapproved that circular letter by any communication to any one, did you?

A. I did not—in fact I never laid any value on it—I put it back in an envelope and put it in a pigeon hole immediately—I did not even read it, I think.

X Q. 559. You referred all communications in regard to this matter to the firm of Dillon & Goetz?

A. All communications that came to me on that circular letter I put in an envelope and sent to Dillon & Goetz.

X Q. 560. Is it not a fact Mr. Iverson that after this suit
1127 was started that certain agents or attorneys called upon you in trying to induce you to drop the suit?

A. No sir.

X Q. 561. Is it not a fact that some person called on you?

A. No sir.

X Q. —. How did you first hear about this Carter being mixed up in it?

A. I heard that in Chicago.

X Q. 563. Is it not a fact that at the time that Mr. Trubey called on you Mr. John F. Burke was there?

A. Yes, Mr. Burke was in the store at the time.

X Q. 564. Was he not attempting to have you withdraw from the case?

Objected to as not proper cross-examination.

A. I had already withdrawn from the case at the time.

JOHN C. IVERSEN.

1128 JOHN F. BURKE being first duly cautioned and sworn testified as follows:

Examined by Mr. MITCHELL:

Q. 565. What is your name?
A. John F. Burke.
Q. 566. Where do you reside?
A. In Milwaukee, Wisconsin.
Q. 567. What is your occupation?
A. Lawyer.
Q. 568. Do you hold a policy or certificate of membership in the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota?
A. I do, amounting to $6000.
Q. 569. How long have you been a member?
A. I have been a member ten or twelve years.
Q. 570. Do you know Mr. Edmund D. Carter?

Objected to as incompetent, and immaterial and irrelevant, and as not covered by the pleadings.

A. I do.
Q. 571. When did you first become acquainted with him?

Same objections.

A. In the winter of '96.
1129 Q. 572. When did you first meet him?

Same objections.

A. In my office in this city.
Q. 573. State what was said at that interview.
A. Mr. Carter came to my office one day here in Milwaukee—I think it was about December 1896—and asked me if I was a member of the Bankers Life Association of St. Paul, Minnesota, and I told him that I was—he asked me what amount of insurance I carried in it—I told him—he told me that he heard I was a member, that he had been so informed by Dr. Kasten, a physician residing in this city, and that Dr. Kasten had sent him to me. He wanted to know if I knew that the Bankers Life Association was a rotten concern, that its affairs were grossly mismanaged, that it could not continue business and could not pay its obligations. I told him that I doubted what he said, that I was busy that day and did not have time to talk the matter over with him. He said he would call again. He called two or three different times after that. Each time I happened to be busy and each time he started in with
1130 practically the same statements regarding the concern, and I finally told him that I did not have time to discuss the matter with him, that if he would put what he had to say in writing I would consider it. Some time afterward, probably within a

week or ten days, I got a long communication from Mr. Carter in his handwriting, making charges against the management of the company, the methods which they were doing business and statements to the effect that they could not continue to do business etc. The matter remained on my desk without being read through—I glanced over a page or two of it and left it there—did not have time to read it over—and finally sent it to Mr. Secor—who was a representative or agent or manager of agencies of the Bankers Life Association, as prior to that I had made the acquaintance of Mr. Secor, and asked Mr. Secor to look the thing over if he thought fit and write me about it, or see me about it on his next visit to the city. Mr. Secor came to the city some time after that, according to my recollection, and we discussed the matter. I think it was in 1897—or some time after that—some time after he had given me this communication—I had another talk with him about it.

1131 Q. 574. With whom?

Same objections.

A. With Carter—in which he made the same sort of statements against the company, claiming each time that it was fraudulent—that it was a fraudulent device to obtain money from people, and making general and violent gross charges of that kind—now do you want me to go any further with that?

Complainants' counsel move that the answer so far be stricken out as not responsive and as being hearsay and *ex parte* evidence and as incompetent, irrelevant and immaterial.

Q. 575. Have you been present to-day and heard all the testimony that was taken before Mr. Goodwin?

Same objections.

A. No, I have not heard it all.

Q. 576. Did you hear the testimony of Mr. Matt Scharel?

Same objections.

A. I did.

Q. 577. Calling your attention to the meeting in June 1900 which Mr. Scharel spoke of, state whether or not you were present at that meeting.

1132 Same objections and also objected to as leading.

A. I was present at the meeting when it first convened in what is known as the Merchants' & Manufacturers' hall.

Q. 578. Was that a meeting of some of the members of the company?

Same objections and also as leading.

A. That was a meeting of certain members of the Bankers Life

Association of Minnesota called by Mr. Carter on typewritten notices sent out by him to the different members asking them to meet there on a certain day—I think the 10th of June.

Motion made by complainants' counsel to strike out the answer as irresponsive, incompetent, immaterial and hearsay evidence.

Q. 579. State whether or not Mr. Carter was present at that meeting.

Same objections.

A. He was present at that meeting. I will say further that I was a member of the Bankers Life Association at that time and I held a proxy from one of the members who could not be present and Mr. Carter objected to my being present at that meeting.

1133 Motion made to strike out the answer as not responsive.

Q. 580. Does Mr. Scharel's statement of what took place at that meeting correspond with your recollection of the facts?

Objected to as being impertinent, irrelevant and immaterial and not proper examination, and as being reading hearsay and *ex parte* evidence.

A. Mr. Scharel's statement of what took place at the meeting in the room where it first met is correct. What transpired in the adjourned meeting on the floor below in Mr. Bogk's office I do not know except as it was afterwards reported to me, as I was not present at that adjourned meeting.

Q. 581. Do you recollect the fact of an indictment having been returned?

Same objections and as leading.

Question withdrawn.

Q. 582. State whether or not you recollect of any indictments having been returned in the United States district court for the eastern district of Wisconsin against any of the officers and trustees of the Bakers Life Association during 1899.

Same objections.

1134 A. I do. The grand jury of the district court of the United States for the eastern district of Wisconsin returned an indictment against the officers and directors of the Bankers Life Association of Minnesota, the latter part of April, 1899.

Motion made by complainants' counsel that the answer be stricken out as not being the best evidence.

Q. 583. Did you take any part in any proceedings before the district court of the United States at that time in relation to this indictment?

Same objections.

A. I did.
Q. 584. In what capacity?

Same objections.

A. As legal representative of the defendants.
Q. 584½. Were you present with the grand jury at the time they were considering the matter of this indictment?

Same objections and also as not the best evidence.

A. The grand jury were hearing evidence off and on for about six weeks, according to my recollection, before an indictment
1135 was returned against those officials of the Bankers Life Association. I was present in the court room of the United States court on several occasions during that time and in connection therewith, as I was then the legal representative of the Bankers Life Association in connection with that matter. I was not in the jury room during any of the deliberations, but I was present in the court room and knew and saw a great deal of what was going on there at that time.

Motion made by defendants' counsel to strike out the answer as not responsive.

Q. 585. State whether or not you saw Mr. Carter at that time?

Same objections.

A. Mr. Edmund D. Carter—I did.
Q. 586. What was he doing?
A. He was there assisting the district attorney of the United States and testified before the grand jury.

Same objections, and motion by defendants' counsel to strike out as not responsive and as not the best evidence.

Q. 587. State whether or not you saw Mr. Carter in the grand jury room.

1136 Same objections and as leading.

A. I did—I saw him in the grand jury room on different occasions—I saw him enter the grand jury room and leave it on different occasions.
Q. 588. Was the grand jury in session at that time?

Same objections.

A. Yes, sir, it was.
Q. 589. State whether or not the jury then had under consideration the matter of the Bankers Life Association?

Same objections.

A. The grand jury were then considering the Bankers Life Association, as I could state of my positive knowledge, for this reason:

The Bankers Life Association, or the officers or some of them, had received a communication from the United States district attorney who was conducting the investigation, asking them if some of their trustees or officers would come here to testify before the grand jury. They communicated with me in regard to the subject and after I had consulted with the district attorney I advised them that I thought they might with impunity come here. The officials came here and were here some two or three days and on one oc-
1137 casion the then local counsel of the Bankers Life Company and myself and two of the officers of the company waited for about half a day in the lobby of the court house until Mr. Carter had completed certain testimony that he was giving before the grand jury.

Q. 590. Did you see Mr. Carter at any time during the fall of the year 1900?

Same objections.

A. I did.

Q. 591. Where did that interview occur?

Same objections.

A. That interview occurred in his office in the Merrill building in this city on the 27th of November, 1900.

Q. 592. State how you happened to be present in his office?

Same objections.

A. The morning of that day I was called to the telephone. The person at the other end of the line said that he was Mr. Carter, said that he could not come to my office and asked me to go to his office, as he said that there was some matters that he wanted to talk over with me in regard to the Bankers Life Association.

1138 Q. 593. State what was said at that interview.

Same objections.

A. At that interview Mr. Carter spoke of the litigation of the Bankers Life Association and of his connection with it. He then told me that his health was poor, that he would like to go and live in the city of Mexico. He showed me a document which he called the—I think he called it "The Bankers Life Brought Down to Date." He said that if the Bankers Life Association of St. Paul, Minnesota, did not deal with them that he would have that pamphlet published, that he would send it to the insurance commissioner of every State in the Union in which they were licensed to do business and that he would make them all the trouble that he could, that they ought to know by that time how much trouble he could make them, as he had been after them for several years, and they knew it, and that it had cost them a great deal of money. He then showed me an old draft that had been drawn upon a bank in the city of Mexico, which had been used by him or which had been used in his business as a

distiller in Louisville, Kentucky, I think it was, that he had gotten hold of. He said that if he had $25,000 he would leave the
1139 country. He said also that if he had $25,000 "he would" to use his words "let up on the Bankers Life Association" that if he did not get it he would not let up, but would continue to prosecute and persecute them. I then said to Mr. Carter after listening to this, "Carter, I understand then, that $25,000 is your price?" He said, "Yes, that is about it. Now, they can pay that to me or take the consequences." I asked him if he had ever done any work for the company and he said no. I asked him if he had ever been employed by them and he said no. I asked him if he had any claim or debt against the company and he said no. I then asked him why the company should pay him $25,000. His answer was "They can afford to pay me that to have me let up on them." I said, "Carter, it is practically $25,000 blackmail—that is what it amounts to," and he said, "You can call it what you want." "Well," I said, "that is what I prefer to call it." Then he handed me a document and said that the money could be arranged to be sent to this bank in Mexico and mentioned different ways in which it could be sent there, so that it could not be traced, so that in auditing the books of the company—the Bankers Life Asso-
1140 ciation—it would not appear as though this money had been given for blackmail—said that it might be deposited in his name there with the bank as credit for services or as a fund with which to push the business of the company in Mexico or elsewhere—that is about the gist of that little conversation.

Plaintiffs' counsel moves that the answer be stricken out as incompetent, irrelevant, immaterial, not responsive, *ex parte* and as hearsay evidence.

Q. 594. Mr. Burke, were you present before Marshall E. Samsell, clerk of the United States circuit court for the northern district of Illinois, a commissioner appointed to take testimony in this case, at the time Mr. E. P. Kenyon was examined as a witness before that commissioner during the past week?

Same objections.

A. I was.

Q. 595. Did you hear the testimony of Mr. Kenyon at that time?

Same objections.

A. I did.

Q. 596. Do you recollect Mr. Kenyon's statement in regard
1141 to a contract which he claimed was entered into between him and Mr. Edmund D. Carter on or about June 10th, 1899, relating to the proposed division of the money that was to be obtained by Mr. Carter out of his prosecution of the Bankers Life Association, a copy of which contract was introduced in evidence and identified by Mr. Kenyon.

Same objections.

A. I did.

Q. 597. Do you recollect Mr. Kenyon's statement that he gave that contract so signed by Mr. Carter either to you or to the Field Detective Service Company?

Same objections.

A. Yes.

Q. 598. State whether or not that contract ever came into your possession.

Same objections.

A. It did.

Q. 599. Where did you obtain it?

Same objections.

A. It was handed to me by Mr. E. P. Kenyon in my office in this city, Pabst building, on or about the day on which it bears date.

1142 Q. 600. State whether or not Mr. Kenyon left that contract in your possession?

Same objections.

A. He did.

Q. 601. Do you know where that original contract is?

Same objections.

A. I do not.

Q. 602. Have you made any search among your papers in your office, or elsewhere, for it?

Same objections.

A. I have personally and I have also had two of my best clerks make a thorough and diligent search through all my records and files and throughout my offices but I cannot find that contract which Mr. Kenyon handed me.

Q. 603. State if you know what has become of this contract.

Same objections.

A. I do not—I cannot find it—it has probably been lost or mislaid with some papers in the office where I cannot find it.

Q. 604. Are you acquainted with the handwriting of Mr. Carter?

Same objections.

A. I am.

1143 Q. 605. Have you ever seen him write?

Same objections.

A. I have.

Q. 606. I will call your attention to Defendants' Exhibit 23, which purports to be an envelope on the letterhead of Dillon & Goetz, postmarked Chicago, and addressed to Mr. Charles Scanlon, lawyer, Milwaukee, Wisconsin, and will ask you in whose handwriting are the words, "Mr. Charles Scanlon, lawyer, Milwaukee, Wis."

Objected to as incompetent, irrelevant, immaterial, impertinent and for the reason that no foundation has been laid for it, and as not admissible under the pleadings and issues of the case.

Q. 607. I will modify that question by asking you to state if you know in whose handwriting those words are?

Same objections, and also as leading.

A. I do know.

Q. 608. In whose handwriting are they?

Same objections, and as leading.

A. In the handwriting of Mr. E. D. Carter.

Q. 609. I will call your attention to Defendants' Exhibit
1144 26, which purports to be a letter dated November 3d, 1901, from Dillon & Goetz to Hon. William R. Knell, tax commissioner Milwaukee, Wis. The body of this is in typewriting, and the signature "Dillon & Goetz," is written with pen and ink, and I ask you to state whether you know in whose handwriting the signature Dillon & Goetz is.

Same objections.

A. I do.

Q. 610. In whose handwriting?

Same objections.

A. In the handwriting of Mr. E. D. Carter.

Q. 611. I will call your attention to Defendants' Exhibit 30 which purports to be a letter from Dillon & Goetz to H. Kuenzli Esq., Milwaukee, Wisconsin, dated October 26, 1901, the body of which is in typewriting and the signature in pen and ink, and ask you if you know in whose handwriting the signature, Dillon & Goetz, is?

Same objections.

A. I do.

Q. 612. In whose handwriting is the signature, "Dillon & Goetz"?

Same objections.

1145 A. In the handwriting of E. D. Carter.

Q. 613. I will call your attention to Defendants' Exhibit 32, which purports to be a letter from Dillon and Goetz under date of October 28, to Mr. H. Kuenzli, Milwaukee, Wisconsin, the whole

of which letter except the printed letterhead is written in pen and ink, and ask you to state whether you know in whose handwriting the pen and ink writing on that letter is?

Same objections.

A. I do.

Q. 614. In whose handwriting is that?

Same objections.

A. In Mr. Edmund D. Carter's.

Mr. MITCHELL: I would like to offer in evidence again Defendants' Exhibit 23, also and separately Defendants' Exhibit 26, also and separately Defendants' Exhibit 30, also and separately Defendants' Exhibit 32.

Exhibits 23, 26, 30 and 32 are now objected to, that is, their introduction is objected to, as incompetent, irrelevant, immaterial,
1146 impertinent, and for the reason that no foundation has been laid for their introduction, and as not being properly identified and as hearsay evidence.

Cross-examination.

By Mr. DILLON:

X Q. 615. How long have you been the legal representative of the Bankers Life in this city, now the Minnesota Mutual?

A. I have not any regular retainer from the Bankers Life of Minnesota.

X Q. 616. The officers have treated you as their attorney at this place on different occasions?

A. Sometimes they have when they had matters here to attend to, as I understand it.

JOHN F. BURKE.

1147 Mr. DILLON: I move that the evidence taken here to-day be excluded from the record on the ground that it is incompetent, immaterial, irrelevant and not admissible under the pleadings and issues of the cause, and that the most of it is hearsay and *ex parte* evidence; also that a great deal of it is in response to questions which are leading, and that it is at the defendants' expense.

1148 STATE OF WISCONSIN, } ss:
Milwaukee County, }

I, Henry D. Goodwin, the commissioner appointed to take testimony in the cause entitled in the caption of these depositions, and a notary public duly commissioned, qualified and authorized to administer oaths in the county of Milwaukee and the State of Wisconsin, do hereby certify that the reason for taking the foregoing depositions

is, that the witnesses above named and each of them are material and necessary witnesses in the cause in the caption of said depositions entitled and that they and each of them reside more than 100 miles from the place of trial of the said cause. I further certify that notice to the complainants and their solicitors and counsel of the time and place of taking said depositions, and notifying them to appear at said time and place and take such part in the examinations as they might be advised, was made out and served on said complainants and on their solicitors and counsel, as appears from the notices hereto annexed with the proof of such service thereon endorsed, and I further certify that I was attended by the parties and their counsel at the time
1149 and place as stated in the caption of said deposition- and in said notices, and by the witnesses therein named, and that the said witnesses being of sound mind and of lawful age were each, before the commencement of the taking of their respective depositions, by me duly and publicly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, and was carefully examined, that the depositions of each of said witnesses as given was reduced to writing by me, and from the statements of the said witnesses, and that the depositions of such witnesses and each of them when completed were by me carefully read over to only the said witnesses and each of them and subscribed by such witnesses in my presence; and I further certify that the exhibits attached to said depositions are the ones referred to therein; that I have retained the said depositions in my possession until I could seal the same up and deposit them in the post office directed to said court; and I do further certify that I am not of counsel or attorney for either of the parties to said cause nor in anywise interested in the event thereof.

1150 In testimony whereof I have hereunto set my hand and notarial seal this 12 day of May, 1902.

HENRY D. GOODWIN.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

I further certify that my fees for taking the aforesaid deposition are as follows:

One day's attendance	3.00
Swearing 10 witnesses	1.00
400 folios original filed at 10c	40.00
4 copies of same at 10c. per folio each	160.00
Mailing	.26
Total	204.26

[Seal of H. D. Goodwin, Notary Public, Milwaukee County, Wis.]

My commission expires Dec. 25, 1904.

Received May 17th 1902.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

Filed May 17th, 1902.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

1151 In the Circuit Court of the United States for the District of Minnesota.

J. C. IVERSON and SAMUEL WRIGHT
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF MINNESOTA, Formerly The Bankers Life Association of Minnesota; C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Lutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota.

Testimony of certain witnesses, taken on behalf of the defendants, before Marshall E. Sampsell, clerk of the United States circuit court for the northern district of Illinois, pursuant to the notice and commission hereto annexed, at the office of said clerk, in the Monadnock building, city of Chicago, county of Cook, State of Illinois, commencing on Wednesday, the 30th day of April, 1902, at 10 o'clock in the forenoon.

Appearances.

Messrs. Dillon & Goetz, attorneys for complainants.
Messrs. William D. Mitchell and Timothy R. Palmer, attorneys for defendants.

1152 FREDERICK OBERNDORF, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Mitchell, and testified as follows:

Q. What is your name?
A. Frederick Oberndorf.
Q. Where do you reside?
A. Business or residence?
Q. Both.
A. I reside half and half; I am moving to-day. I have been residing at 3553 Vernon avenue. My new address is 4640 Prairie avenue.
Q. In the city of Chicago?
A. My business address is 61 Market street.

Q. What business are you engaged in?
A. I am a manufacturer of upholstery and drapery trimmings.
Q. You are a member of the Minnesota Mutual Life Insurance Company?
A. Yes, sir.
Q. Are you the same Frederick Oberndorf that at one time made an application to be made a party to this action, and afterwards withdrew?

Mr. DILLON: That is objected to as being immaterial, irrelevant and incompetent, impertinent, and not admissible under the pleadings.

A. Some time ago a gentleman came in,—I think that is the gentleman right here (indicating).
Q. This gentleman here, Mr. Alfred Goetz?
1153 A. That is the gentleman. He sent in his card to me and asked me if I was a member of the Bankers Mutual Insurance Company; I told him I was, and he asked me if I would not join in a suit which was being brought by a lot of members to try to get an injunction to the transferring of the property from one company to the other.

Mr. DILLON: I move that the part after stating who called on him be stricken out as not responsive.
Mr. MITCHELL: What did Mr. Goetz state to you at that interview?

Objected to as immaterial, irrelevant, incompetent, and no foundation laid.
(Question read.)

A. Well, he said there was quite a good many stockholders who would be dissatisfied with the transfer of the property from the old to the new company, and they were trying to get an injunction. I told him I didn't care very much about joining it, and he told me I would have nothing more to do with it and my expense would be three dollars.

Mr. DILLON: The last part I move to strike out as not responsive.
Mr. MITCHELL: Do you recollect whether he stated that the suit had already been commenced, or was about to be commenced?

Objected to.

A. About to be commenced, I think it was.
1154 Q. Did he want to use your name as a complainant in the suit?

Objected to as incompetent and immaterial.
(Question read.)

A. Well at that time he wanted to use my name, and I told him

I had no objection, so far as that went, at that time, but I did not want to be a party directly to the suit; I might be a sort of co-joiner in the suit. Subsequently he came to me again.

Objected to as not responsive.

Q. Did he make a subsequent call on you in regard to this matter?

Objected to as incompetent, irrelevant and immaterial.

A. Yes, sir.
Q. What took place at this second interview?

Objected to as incompetent, irrelevant and immaterial and inadmissable under the pleadings.

A. He came with a typewritten document,—I suppose it was an injunction, or something of that kind,—and he wanted to use my name as being the principal party. I told him that was not the understanding, and I would not care to sign it; furthermore, it was a lengthy document, and I had not time to read it, and I would not take time to read it.

Mr. DILLON: I move that the last be stricken out, where
1155 the witness refers to the injunction, as not responsive.

A. He finally said that he would have to get somebody else in Milwaukee.

Mr. DILLON: That is objected to for the same reason, and I move to strike it out as not responsive.

Mr. MITCHELL: Do you recollect the date at which this interview took place substantially?

Objected to as immaterial, irrelevant, incompetent and impertinent.

A. I could not recollect the date.
Q. Was it in the year 1901?

Same objection.

A. I think it was 1901.
Q. Do you recollect whether it was in the summer or fall of that year?

Same objection.

A. I think it was in the fall.
Q. Did Mr. Goetz at these interviews make any statement to you about what the company was doing?

Mr. DILLON: Same objection, and also that it is leading.

A, At that time there was very little conversation. I do not remember anything of any consequence that was said.

Mr. MITCHELL: What ground did he give for wanting you to commence this suit against the company?

Objected to as incompetent, impertinent, irrelevant, not
1156 admissible under the pleadings, and as leading.

A. Well, as I stated before, they were disposing of the Bankers Life property into the new company, which they had no right to do. I believe he said that the State was opposed to it, and they had good cause for stopping the proceedings.

Q. Was that what Mr. Goetz stated to you at those conversations?

Same objection.

A. Yes, sir.

Q. Did you afterwards withdraw your name from the suit?

Objected to as incompetent, irrelevant, immaterial, inadmissible and impertinent.

A. I spoke to one of the agents of the company at one time——

Q. I just want a brief answer to that question, yes or no.

A. I did.

Cross-examination.

By Mr. DILLON:

Q. You had changed your certificate from the assessment plan to the guaranteed option plan,—is that right?

A. I don't know exactly what it is; it is the old line company, an old line company policy.

Q. According to the new change in the administration?

A. Yes, sir.

1157 Q. When did you change, Mr. Oberndorf?

Objected to as incompetent, immaterial and irrelevant, and not proper cross examination.

A. I think it was some time last fall, possibly in August or September.

Q. What agent solicited you to make this change?

Same objection.

A. I cannot remember the name.

Q. It was an agent of the company?

Same objection.

A. One of the agents of the company.

Q. What inducements or credits or any other advantages did they give to you if you would change from the assessment plan to this new guaranteed option policy, or this new line plan?

Objected to as not proper cross examination.

A. They gave me no inducements, except they made me a proposition as to how I am to pay future premiums. I think I was to pay them quarterly, and they allowed me a certain amount on the first or second payment.

Q. That is as credits from your old—what you had paid in on the other plan; is that right?

Same objection.

A. Well, some part of the plan which I gained—I ought to have been entitled to a certain amount of money which I paid as a note, and the note subsequently became due, and I paid the note,
1158 and I claimed I ought to be entitled—the amount was $50, and I claimed I ought to be entitled to something on it, and I think they allowed me something on it; I don't know how much it was.

Q. You think all of that was credited to you on your future payments?

Same objection.

A. I don't think it was all, but I could not say; part of it; I could not exactly say. I went over the figure- then and I couldn't hardly go over the figures again.

Q. Do you know what your quarterly assessment would be now?

Same objection and as not cross examination.

A. I could not; I would not care to tell, because I don't remember what it is exactly, because the first payment and second payment are not quite as much as the future ones, because I got some credit.

Q. You don't exactly remember the amount?

A. I don't exactly remember the amount.

Q. Did this agent who called on you and who solicited you to become a member under the new plan, and change your certificate as you have indicated, tell you or give you any information in regard to the suit here being brought in bad faith?

Objected to as not proper cross examination.

A. I don't believe there was anything of that kind mentioned.

1159 Q. Did he say anything with reference to the suit?

A. No, sir, nothing with reference to the suit. I merely told him that I intended to withdraw from the thing, and he said he would notify the attorneys, and it would be shown that I had withdrawn from the suit.

FREDERICK OBERNDORF.

Subscribed and sworn to before me this 9th day of May, A. D. 1902.

MARSHALL E. SAMPSELL.

1160 J. H. PANK, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Mitchell, and testified as follows:

Q. What is your name?
A. J. H. Pank.
Q. What is your business?
A. I am in the malting business.
Q. Where do you reside?
A. 1251 Perry street.
Q. What is your business address?
A. No. 14 Pacific avenue,—Commerce building. It is changed now to La Salle street.
Q. Did any person ever come to see you about the suit of J. C. Iverson and others against the Minnesota Mutual Life Insurance Company?

Objected to as incompetent, irrelevant and immaterial, and inadmissible under the pleadings.

A. Yes, sir.
Q. Is there any person in this room that came to see you?

Objected to as incompetent, immaterial, irrelevant and as leading.

A. Yes sir.

1161 Q. Will you designate him?

Same objection.

A. That gentleman there (indicating Mr. Edmund D. Carter).

Mr. MITCHELL: Will you admit that this is Mr. Edmund D. Carter that the witness designated?
Mr. DILLON: Yes.
Mr. PALMER: You admit that the person the witness indicated is Edmund D. Carter?
Mr. DILLON: That is admitted, I believe.

Mr. MITCHELL: State what was said.

Objected to as incompetent, irrelevant, immaterial, impertinent and not admissible under the pleadings.

A. I met Mr. Carter in front of the Gaff building on La Salle street, one morning, and he introduced himself as coming from Louisville, which is my home, and asked me whether I had two policies in the Bankers of St. Paul; I told him I had two policies of $2000 each; and he asked me whether I had heard that there was any trouble in regard to the company, and that they were also changing from the assessment plan to the old line plan of insurance. I told him I hadn't heard of it at the time, but that it was certainly interesting to me, and he said he would be glad to call on me at my office some day at Pacific avenue and explain the matter to me; with that I left him,—with that conversation.

1162 Q. Did he say anything about a suit at that time?

Same objection.

A. Not at that time.
Q. Can you fix the date of that conversation?

Same objection.

A. It was in October of last year.
Q. Did Mr. Carter come to you after that?

Objected to as incompetent, irrelevant, immaterial and impertinent.

A. Yes, sir.
Q. What took place at this subsequent meeting?

Same objection.

A. Mr. Carter came to my office and had a lot of papers with him of some suit that a lot of the old assessment plan policy holders were instituting against the company; that various parties had joined in this suit, and he wanted me to join. I told him I would not do it; that I wanted to investigate for myself. In the mean time I had gotten some circulars of some kind, signed by Iverson and Wright, or something, or on their letter-heads, I forget which it was, in which they stated that they were going to bring suit or something of that sort against this company, and I had written also to Mr. Putnam asking as to the standing of the company. When I showed Mr. Carter, I think, or told him, at least, the replies that I had gotten, and told him I was perfectly satisfied with the standing of the company, and that I thought I would continue my
1163 policies and pay my premiums as they became due, he insisted on explaining the defects of the company, and in fact said as much that the company was absolutely broke, and that my policies were probably worthless to my family; if I should die I would not get a penny out of this insurance policies. Of course I listened very attentively, being much interested, when Mr. Carter jumped on me all of a sudden and said, "I can, however, place you in a company that is good." That was the climax of our conversation, when I told Mr. Carter that I would have nothing more to do with him, when I concluded that he simply came to blackguard one company to get insurance for another, and I told Mr. Carter just to get out of the door.

Mr. DILLON: All that part after the letter from Iverson and Wright and also the letter from Putnam, I move to strike out of the answer as not responsive.

Mr. MITCHELL: Did Mr. Carter state who was getting up this suit against the Minnesota Mutual?

Objected to as incompetent, irrelevant, immaterial, and not admissible under the pleadings.

A. He mentioned no names at all that I remember.
Q. Can you fix the date of this second conversation?

Same objection.

A. It was in October.
Q. What year was that conversation?
A. 1901.
Q. Where did it take place?

Same objection.

1164 A. At my office.
Q. Is your office in the city of Chicago?

Same objection.

A. Yes, sir.

Cross-examination.

By Mr. DILLON:

Q. Now, Mr. Pank, you say you knew Mr. Carter in Louisville?
A. No, sir, I did not.
Q. Who called on you prior to your testimony this morning—with whom did you have a conversation in regard to this?
A. In regard to this matter?
Q. Yes.
A. That gentleman (indicating Mr. Mitchell) called on me.
Q. When?
A. About ten days or two weeks ago, I think.
Q. He had a talk with you, did he?
A. Yes, sir.
Q. He told you the company was in good standing?
A. He what?
Q. He told you that the company was in good standing, did he
A. No, sir, the company was never mentioned.
Q. Where did he meet you?
A. At my office.
Q. Do you remember the date?
A. I do not, sir.
Q. How long did you talk?
A. Oh, about ten minutes.
Q. You have a new policy?
A. Yes, sir.
Q. That is a guaranteed option policy, isn't it?
1165 A. Well, I exchanged the old for the new.
Q. When?

Objected to as immaterial and not cross examination.

A. A year ago, perhaps; I don't remember.
Q. They gave you credit, did they, as testified by Mr. Oberndorf?

Same objection.

A. Yes, sir.
Q. Who solicited you to change, if anybody?

Same objection.

A. I do not know the gentleman; it was a heavy set gentleman; I could not tell his name now.
Q. He is one of the agents of the company?

Same objection.

A. I suppose he is.
Q. And you have an interest in seeing the change effected, is that right?

Same objection.

A. No, sir, I was opposed to it at first, as I had taken the policies under the assessment plan, I concluded to fight them out that way.

1166 W. A. RENNICK, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Mitchell, and testified as follows:

Q. What are your initials, Mr. Rennick?
A. W. A.
Q. Where do you reside?
A. No. 1 Aldine square, Chicago.
Q. What business are you engaged in?
A. Lumber.
Q. Are you a member of the defendant company, The Minnesota Mutual?
A. Yes, sir.
Q. Did you ever receive any communications from any person in regard to any suit that was about to be brought against the company?

Objected to as incompetent, irrelevant and immaterial, and not admissible under the pleadings.

A. I received a circular letter from parties—from Iverson and Wright.

Mr. DILLON: I object to the witness testifying from memorandum.

Mr. MITCHELL: Have you that circular letter?

A. I have one in front of me, yes, sir (handing counsel paper).

Objected to.

Mr. DILLON: I object to the witness and attorney conversing.

Mr. MITCHELL: I show you that paper marked Defendants'
1167 Exhibit 1," and ask you if that was the circular you received.

Objected to as incompetent and immaterial.

A. That is a similar circular; that is like it; I don't know if it is identically the same circular.

Q. Have you any communication from which you can refresh your memory as to the date of having received the circular?

Objected to as incompetent, irrelevant and immaterial and leading.

A. I wrote to the company at the time of receiving the circular.

Q. Have you the letter that you wrote before you?

Objected to.

A. Yes, sir, I have it before me; this is the letter (indicating).

Q. Using that letter to refresh your recollection as to the date, I will ask you about what time you received this circular?

Mr. DILLON: I make the same objection, and also as not bein- the best evidence.

A. About October 21st, 1901.

Mr. MITCHELL: When did you receive this circular?

Same objection.

A. At my office, through the mail.

Q. Did you say through the mails?

A. Yes, sir.

Q. Were there any other papers enclosed with that circular at that time?

1168 Same objection.

A. Yes, sir, this paper was enclosed (indicating Exhibit 2).

Mr. MITCHELL: I will offer in evidence Exhibits 1 and 2.

Mr. DILLON: They are objected to as incompetent, irrelevant, impertinent, and not admissible under the pleadings.

Which exhibits are attached hereto, and made a part of these depositions.

Cross examination.

By Mr. DILLON:

Q. Do you say this one is the one you received (indicating)?

A. I received one similar to this.

Q. Is this the one (indicating)?
A. I cannot swear as to that.
Q. What about this paper (indicating Exhibit 1)?
A. I pinned that to my letter when I mailed it to him.
Q. You have taken a new policy?
A. Yes, sir.
Q. When did you change?
A. At the time the company made the change; I should say two years ago, or a year ago last fall.
Q. Do you remember how much you had in the Guarantee Trust Company?

Objected to as not cross examination.

A. Yes, sir.
1169 A. I had $6000.
Q. How much did you have on deposit in what is known as the Guarantee Trust Company?
A. Oh, I can't tell you.
Q. Who solicited you to change?

Objected to as not proper cross examination.

A. I don't know only further than it was a gentleman of the company, that is all.
Q. How many times did they call on you?

Same objection.

A. Twice.
Q. Do you remember what inducements they gave you to change?

Same objection.

A. None.

Mr. MITCHELL: I do not see the use of going over this thing. It is admitted in the pleadings, and it seems to me you are just running up expenses.

W. A. RENNICK.

Subscribed and sworn to before me this 15th day of May, A. D. 1902.

MARSHALL E. SAMPSELL,
Commissioner.

1170 CHARLES MILLER, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Mitchell, and testified as follows:

Q. What is your full name?
A. Charles Miller.
Q. Where do you reside?
A. My residence address is 85 Powell avenue.
Q. What city?
A. Chicago.
Q. What business are you engaged in?
A. Manufacturer of office desks.
Q. Are you a member of the Minnesota Mutual Life Insurance Company?
A. Yes, sir.
Q. Have you at any time received any communications in regard to any suit against this company?

Mr. DILLON: That is objected to as incompetent, irrelevant, immaterial and inadmissible under the pleadings.

A. I did. I got a request from some——
Mr. MITCHELL: Just wait a minute, Mr. Miller. How did this communication come to you?

Same objection.

A. By mail.
Q. Did it come to your business address or your residence?

Same objection.

A. To my business address.
1171 Q. What is your business address?
A. 284 to 290 Homer street.
Q. Have you any papers before you from which you can place the date of the receipt of these communications?

Same objection.

A. Well, I can judge from the date of my letter to you. That is dated the 26th of October, and I think that was written a day or two later than I had the interview with these attorneys. I had forwarded them to you and asked for an explanation.

Mr. DILLON: I move to strike that out as not being responsive.

Mr. MITCHELL: What year was this communication received?
A. 1901.
Q. Using that letter of yours to refresh your memory, about what date did you receive these communications?

Objected to as immaterial, impertinent, and inadmissible under the pleadings.

A. Well, the only thing I can go by is the date of that envelope (indicating).

Q. I will show you Defendants' Exhibit 3, and ask you if that is the envelope in which those communications were enclosed (handing witness envelope).

Objected to as incompetent, irrelevant and immaterial.

1172 A. Well, shall I answer it or not?

Q. Yes.

A. Yes, sir, that is the envelope.

Q. I will show you Defendants' Exhibit 4 and 5, and ask you if those were the papers enclosed in that envelope.

Objected to as incompetent, irrelevant and leading.

A. Well, that is very hard to answer. I suppose this was sent out by wholesale, and I cannot tell whether this is the same one; but the form seems to be the same, but I cannot swear that it is the same one I got.

Q. Did you at the time of receiving these papers forward them to anybody?

Same objections.

Q. What disposition did you make of these papers when you received them?

Same objection.

Q. What did you do with them?

Same objection.

A. I forwarded them to the company and asked for an explanation.

Mr. MITCHELL: I will offer in evidence Exhibits 3, 4 and 5.

Mr. DILLON: Those are objected to as incompetent, irrelevant and immaterial, inadmissible under the pleadings, and no foundation laid.

Mr. MITCHELL: I would like to offer each one of these
1173 exhibits separately and jointly.

Same objection.

Q. Did any one come to see you personally about any suit against the company?

Same objection.

A. No, sir, not personally.

Cross-examination.

By Mr. DILLON:

Q. Had you taken out the new policy, Mr. Miller?
A. Well, I don't know whether you call it a new policy or not.
Q. You have changed?
A. It is changed from one plan to another.

Answer objected to as not responsive.

A. As I understand it is a change of name, the same company.
Q. Do you remember when you changed?

Same objection and as not cross examination.

A. No, I do not.
Q. About how long ago was it?

Same objection.

A. I can't tell.
A. Two years or six months?

Same objection.

1174 A. Well, it may be a couple of years.
Q. You changed then, did you, your certificate in the company under the assessment plan to what is known as the guaranteed option policy plan; is that right?

Objected to as not proper cross examination.

A. I will answer that question so I think it will cover the whole thing. When the change was contemplated I was satisfied——

Mr. DILLON: That is objected to as not responsive.
Mr. MITCHELL: Let the witness answer the question.
Mr. DILLON: Then I move to strike it out.
Mr. MITCHELL: Go ahead.

Mr. DILLON: Can you answer whether or not you changed from the assessment system to the guaranteed option policy? Can you answer that?
A. It is changed, yes, sir.
Q. How many times were you solicited?
A. Sir?
Q. How many times were you solicited by agents of this company to change?

Objected to as not cross examination.

A. How many times?
Q. Yes.
A. Well, I think I went to see the agent myself.

Q. You got letters from the agent, did you?

Same objection.

A. No, sir, not that I know of.

1175 Q. How did you find out that they had changed the plan?

A. I found out by these two attorneys.

Q. Who?

Same objection.

A. I am not familiar with them. They had an office somewhere in the Masonic temple, I believe.

Q. You changed two years ago, did you?

Same objection.

A. I don't want to fix the date. I can probably get to it by looking up certain papers I have got, but I haven't got them with me, but it was after I received that circular I went to see the attorneys.

Q. Who has seen you prior to your examination here today?

A. Nobody.

Q. Who subpœnaed you?

A. The marshal.

Q. Is that the only person that has seen you?

A. That is all.

Q. What gentleman saw you in regard to the change?

Same objection.

Q. Refer to that (indicating) and find out—using this as a memorandum, referring to that,—and answer what day it was you got that policy, the new guaranteed option policy.

Objected to as not proper cross-examination.

A. Well, the date is given here as February, 1900.

Q. You took it at that time, as far as you know.

1176 A. Well, that is the date of the policy (referring to paper).

Re-direct examination.

By Mr. MITCHELL:

Q. When Mr. Dillon asked you about the change and you said it was about the time prior to the receipt of these circulars, did you mean change of policy or change of name of the company?

A. I don't understand the question.

(Question read.)

A. Well, when I received the circulars, I believe that was prior to the change of the name—now I would not say positively, but I think it was prior to that time.

CHARLES MILLER.

Subscribed and sworn to before me this 10th day of May A. D. 1902

MARSHALL E. SAMPSELL,
Commissioner.

1177 THERON R. WOODWARD, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Mitchell, and testified as follows:

Q. What is your full name?
A. Theron R. Woodward.
Q. Where do you reside?
A. At 105 47th street, Chicago.
Q. What business are you in, Mr. Woodward?
A. Publisher.
Q. What is your business address?
A. 323 Manhattan building.
Q. Chicago?
A. Chicago.
Q. Are you a member of the Minnesota Mutual Life Insurance Company?
A. Yes, sir.
Q. Did you at any time receive any communication in any way regarding any suit against this company?

Objected to as immaterial, incompetent, irrelevant and impertinent.

A. Yes, sir.
Q. How did that communication come to you?

Same objection.

A. By mail.
Q. What disposition did you make of the communication?

Mr. DILLON: I make the same objection, and also as leading.

A. I referred it to the company.

1178 Mr. MITCHELL: What do you mean by "referred to"?

Same objection.

A. I enclosed it in a letter. I wrote a letter to the company and enclosed the notification I received by mail and forwarded it all on to the company.
Q. Did you write a letter to the company?

Same objection.

A. I did.
Q. What time was this letter written with reference to the time you received this communication in regard to the suit?

Objected to as immaterial, irrelevant and inadmissible under the pleadings.

A. In October, 1901, I received a letter through the mail, and I referred it out the same day to the company.

Q. Have you before you the letter that you wrote to the company at that time?

Same objection.

A. I believe it is here. (Witness examines paper.) This is the letter.

Q. Using that letter to refresh your memory will you state what date you received the communication in regard to this suit?

Same objection.

A. October 14th, 1901.

Q. Where did you receive this?

Mr. DILLON: I make the same objection, and also as leading.

1179 A. In my office, 323 Manhattan building, Chicago.

Q. Did you keep the envelope that this communication came in?

Same objection.

A. No, sir, I did not.

Q. What did you do with it?

Same objection.

A. Well, I suppose I threw it in the waste basket, as I do all the envelopes on my mail, and just kept the enclosures.

Q. Do you remember whether there was any printed matter on the outside of the envelope?

A. I could not say.

Q. I will show you these two exhibits, marked Exhibits 6 and 7 and ask you whether those were the enclosures in that envelope.

Objected to as incompetent, irrelevant and immaterial, and inadmissible under the pleadings, and no foundation laid, and as leading.

A. Yes, sir, either those or duplicates; the matter was the same on the two that I forwarded; I suppose this is the outfit that I sent up there.

Cross-examination.

By Mr. DILLON:

Q. You have changed your certificate, Mr. Woodward,
1180 from the old line assessment plan to the guaranteed option policy plan?

Objected to as not proper cross examination.

A. Yes, sir.
Q. When did you change?

Same objection.

A. I could not tell without referring to other papers.
Q. About how long ago?

Same objection.

A. I should think at least two years, but I would not swear without referring to the correspondence, papers,—policies.
Q. Do you remember who solicited you?

Objected to as not proper cross examination.

A. I could not remember, no sir.
Q. Do you remember what your deposit in the guarantee trust fund of the association was at that time?

Objected to as not proper cross examination.

A. No, sir, I could not recollect the amounts.
Q. Did they give you any credits as part payments on your premiums under the new plan?

Objected to as not proper cross examination.

A. My recollection is that I had after—that for two or three payments I had some credit—some sort of a credit; but I could not remember the amount without referring.

Q. How many times were you called on and solicited, do
1181 you know?

Same objection.

A. No, sir, I did not charge my mind with it at the time; I did not think much about it; perhaps twice. If I remember a gentleman called twice, and I was too busy to talk to him, and he came up again; but I never gave it any thought, and I could not swear.

THERON R. WOODWARD.

Subscribed and sworn to before me this 13th day of May, A. D. 1902.

MARSHALL E. SAMPSELL,
Commissioner.

1182 EDMUND D. CARTER, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Palmer, and testified as follows:

Q. Your name is Edmund D. Carter, is it?
A. Yes, sir.
Q. Edmund David Carter is your full name?

A. That is my full name.
Q. You sometimes sign your name "E. D. Carter," do you not?
A. Yes, sir.
Q. Sometimes "Edmund D. Carter"?
A. Yes, sir.
Q. Sometimes "Edmund David Carter"?
A. Yes, sir.
Q. Where were you born?
A. Louisville, Kentucky.
Q. When?
A. September 1st, 1861.
Q. Where is your present place of business?
A. Rock Island, Illinois.
Q. Whereabouts in Rock Island, Illinois, do you reside?

Objected to as immaterial.

A. At the Harper house.
Q. How long have you resided at the Harper house?

Objected to as immaterial and irrelevant.

A. About a week and four days, three or four days; I don't suppose it makes much difference.
1183 Q. Are you married or single?

Objected to as immaterial.

A. I am single.
Q. Did you move your personal effects to Rockford when you went there?

Objected to as immaterial and irrelevant.

A. Nearly all of them.
Mr. MITCHELL: Rock Island.
Mr. PALMER: Did you move your personal effects to Rock Island when you moved a week or ten days ago?
A. Part of them, nearly all of them. I expect to send for the rest of them.
Q. Where did you reside prior to going to Rock Island a week or ten days ago?

Same objection.

Q. Where did I reside?
Q. Yes.
A. Chicago, Illinois.
Q. Where was your place of residence in Chicago, Illinois?

Same objection.

A. I lived at 41 Pierson street; that is, I had a room there and took my meals at a restaurant.

Q. Wherever you happened to be in town?
A. Yes, sir.
Q. When did you take up your residence in Chicago?

Objected to as incompetent, irrelevant and immaterial.

1184 A. I think the 26th of January, 1901.
Q. Where did you reside immediately prior to your taking up your residence in Chicago?
A. Milwaukee, Wisconsin.
Q. What was your occupation during the period of your residence in Chicago?

Same objection.

A. I was selling insurance on brokerage and in the employ of Dillon & Goetz.
Q. Dillon & Goetz are attorneys for the complainants in the suit in which you are testifying, aren't they?

Same objection.

A. I decline to answer that question.
Q. Do you give any reason for declining to answer the question?
A. It is my private affairs—that is, it is none of my business, rather.
Q. It is none of your business?
A. Yes, sir.
Q. Do you know whether Dillon & Goetz are the attorneys for the complainants in this suit?
A. I decline to give any information in regard to what I know as to their clients.
Q. What business were Dillon & Goetz employed in during the term of your employment?

Same objection.

A. I decline to answer that as meddling in other people's affairs; I have got no right to tell other people's business.
1185 Q. You are aware that the court can compel you to answer the question?
A. I will answer it if the court directs me to.
Q. When did you enter the employ of Dillon & Goetz?

Objected to as incompetent, immaterial, irrelevant, impertinent, and no foundation laid.

A. Well, I guess that is my private affairs too; I decline to answer that.
Q. What life insurance companies were you soliciting insurance on brokerage for?

Same objection.

A. No particular company. I sold insurance for any company I chose on commissions; I had contracts with some.

Q. During the time of your residence in Chicago what companies did you solicit and procure an application for life insurance policies?

Same objection.

A. I decline to answer that also as my private affairs, and nothing to do with this case.

Q. What compensation did you receive from Dillon & Goetz during your employment?

Objected to as immaterial, irrelevant, incompetent and impertinent.

A. I decline also to answer that as my private affairs and no connection with this case.

1186 Q. Had you any other occupation during your entire residence in Chicago than that you have mentioned?

Same objection.

A. No, sir, except as an accountant; occasionally I did accounting for parties.

Q. By whom were you employed during that time as an accountant?

Objected to as immaterial, irrelevant, incompetent, impertinent, and no foundation laid.

A. I decline to answer.

Q. What was the nature of your employment with Dillon & Goetz?

Same objection.

A. I decline to give you that information unless I am so directed by the court.

Q. I can state to you that you will be pretty likely to be directed by the court.

A. Thank you for the information.

Q. And without bouquets, too.

A. Thank you, sir; I am obliged for the information.

Q. Mr. Carter, as a matter of fact, the most of your time for the last eight or nine months has been devoted to soliciting members of the Bankers Life Association, now the Minnesota Mutual Life Insurance Company, to either institute a suit against that company to have its affairs wound up and a receiver appointed, or to

1187 join in a suit which was instituted in the name of Iverson and Wright by Dillon & Goetz and one John F. Beyers, counsel and attorneys?

Objected to as incompetent, irrelevant and immaterial, and no foundation laid, and inadmissible under the pleadings.

A. No, sir, that is not true.

Q. Have you devoted any of your time during the last nine months to soliciting members of the company referred to to join in litigation looking to the winding up of its affairs?

Same objection.

Q. (Question read.)

A. I decline to answer that question unless ordered to do so by the court.

Q. You prepared a circular letter, didn't you, Mr. Carter, during the last eight to ten months, relating to the affairs of the Bankers Life Association, and a suit then pending against it?

Same objection.

A. No, sir, I did not.

1188 Q. You took part in the preparation of the circular, didn't you?

Same objection.

A. I did not.

Q. Have you seen a circular letter within the last eight or ten months relating to the pendency of a suit brought by Iverson and Wright against the company?

Same objection.

A. I decline to answer that question.

Q. Mr. Carter, I call your attention to Defendants' Exhibit 3 and ask you if you can state whose handwriting it is on that exhibit?

Objected to as incompetent, irrelevant, immaterial and inadmissible under the pleadings.

Q. That is, that that is written in ink.

A. That is a privileged communication, I do not care to give those things away.

Mr. DILLON: I didn't hear your answer.

A. I say that is a privileged communication; I do not care to answer it.

Mr. PALMER: You decline to answer that question on the ground and on the sole ground that it is a privileged communication to you?

A. Yes, sir.

1189 Q. I will ask you whether the words written in ink on Defendants' Exhibit 3, as follows: "Mr. Charles Miller, furniture mfg., 284 Homer street, Chicago, Ills." are not in your handwriting?

Same objection.

A. If the court directs me to answer it I will answer.

Mr. SAMPSELL: I think you can answer that question.

A. Yes, sir, that is my handwriting.

Mr. DILLON: I except to the ruling of the commissioner that is taking the testimony.

Mr. MITCHELL: We simply desire to have the commissioner here to properly certify the matter to the court.

Mr. SAMPSELL: I think the record should simply show the question put, the denial of the witness to answer in the presence of the commissioner, so I can certify it to the court.

Mr. DILLON: I move that the answer be stricken out that was given in response to the commissioner's direction to answer.

(Former question read.)

Mr. PALMER: You still decline to answer that question, Mr. Carter?

Mr. DILLON: I object to a new record being made here of what has already transpired, it has been gone over once.

Testimony of the witness read.

Mr. PALMER: Now, Mr. Carter, the record having been read that is, the questions which have been propounded to you
1190 and which you decline to answer, together with your reasons for so doing, in the presence of Mr. Sampsell, the commissioner, do you still decline to answer each and all of those questions for the reasons you have already stated?

Objected to as immaterial.

A. I take the same position I have taken in regard to those answers; I simply endorse those answers as being my position in the matter.

Q. During what portion of the period of your residence in Chicago were you engaged in soliciting life insurance as a broker?

Objected to as immaterial, incompetent, irrelevant and impertinent.

A. Well, irregularly all the time since I have been here.

Q. Irregularly from time to time during your entire residence?

A. Wherever I found any business I went after it.

Q. Mr. Carter, did you lodge at the same place that you have mentioned during all your residence in Chicago?

Objected to as immaterial, incompetent and irrelevant.

A. Oh, I decline to go into my private affairs, where I lodged and where I did not. I do not think the court will direct me to answer any such questions as that.

Q. I think you gave the name of some place where you lodged.

A. Yes, sir, with a family just before I left here.

1191 Q. Now, I want to know if you roomed at the same place during your entire residence in Chicago?

Objected to as immaterial.

A. I won't answer that unless the court tells me to.
Q. During your residence in Chicago did you have any place of business other than the office of Messrs. Dillon & Goetz?

Objected to as immaterial, incompetent and irrelevant.

A. Well, I guess if it will do you any good I might tell you that I had headquarters in two places.
Q. You had headquarters in two places?

Same objection.

A. Yes, sir, in order to help me in my business in soliciting insurance.
Q. Where were your other headquarters?
A. 1616 Marquette building, one place.
Q. Did you rent an office there?

Objected to as immaterial and irrelevant.

Q. Did you rent desk room in that office?

Same objection.

A. I did not.
Q. Who was the tenant of 1616 Marquette building during the time you had your headquarters there?

Same objection.

1192 Q. Well, unless the court orders me to answer that I decline to answer it. You know the number, so I will just tell you simply as a compliment, but knowing the number I might as well tell you. Mr. Bokum—what are Bokum's initials—R. C. or R. K. Bokum—well, it don't make any difference if the name is not exactly right.
Q. He was the tenant of that room?

Same objection.

A. Yes, sir.
Q. Were you in partnership with him during that time?

Same objection.

A. No, sir.
Q. Were you employed by him during that time?

Same objection.

A. I guess you have got all the information on that subject that the court will adjudge you to have.
Q. Did you have any business relations with this gentleman whose name you have just mentioned during the time stated?

Same objection.

A. Yes, sir.

Q. What were they?

Same objection.

A. I decline to state unless the court orders me to.

Q. What was this gentleman, Mr. Bokum's occupation during that time?

1193 A. I decline to go into that subject any further unless the court orders me to.

Mr. PALMER: I think now, Mr. Commissioner, that it will be well to adjourn this proceeding until 2 o'clock, and in the meantime we will endeavor to have a transcript of the testimony made and have it reported to the court.

The COMMISSIONER: We will adjourn until 2 o'clock.

Mr. DILLON: What is the occasion of the adjournment?

Mr. PALMER: The occasion of this adjournment is that we are not prepared to go on with this witness owing to his attitude at the present time, in the meantime we propose to have a transcript of his evidence made and submit it to the court under the certificate of the commissioner, and we notify the witness that he is still under subpœna and directed to appear here at 2 o'clock.

The WITNESS: Thanks tremendous.

1194 Parties met pursuant to adjournment at 2 o'clock p. m. April 30th, 1902.

Present same as before.

EDMUND D. CARTER on the stand.

Direct examination resumed by Mr. PALMER:

Q. Mr. Carter, when did you first learn of the institution of this suit, in which Iverson and Wright were originally named as complainants, and The Minnesota Mutual Life Insurance Company and certain persons designated as trustees were defendants?

Objected to as incompetent, immaterial, irrelevant, impertinent, and inadmis-ible under the issues.

A. That is a privileged question, I think. It is business of my employers, Messrs. Dillon & Goetz.

Q. You decline to answer?

A. Being a privileged question.

Q. Did you ever see the original bill of complaint that was filed in this case?

Objected to as incompetent, immaterial and irrelevant, and inadmissible under the pleadings.

1195 A. That is also a question within the purview of my employment.

Q. What did I understand you to say your employment was?

Same objection.

A. In the employ of Dillon & Goetz, as I stated before to-day.
Q. In what capacity?

Same objection.

A. I decline to say in what capacity, for the reason that it is a privileged question.
Q. Mr. Carter, did you prepare or take any part in the preparation of the original bill of complaint filed in this action?

Same objection.

A. That is also a privileged question.
Q. You decline to answer?
A. I decline to answer.
Q. Did you solicit the plaintiffs, Iverson and Wright, to begin this action?

Objected to as incompetent, irrelevant, immaterial, impertinent, and inadmissible under the issues.

A. I decline to answer that because it is a privileged question.
Q. Did you solicit either of those gentlemen to commence this action?

1196 Same objection.

A. I will make the same reply to that that I did to the previous question.
Q. Did you solicit Mr. E. B. Traubey to become a party to the action?

Same objection.

A. The same answer.
Q. You decline to answer?
A. As being a privileged question.
Q. Did you furnish to Dillon & Goetz, prior to or at the time of the commencement of this action, any statements or documents which you claimed to constitute evidence or facts upon which the dissolution of this corporation, or the winding up of its affairs could properly be predicated?

Same objection.

A. The same reply to that as to the previous question.
Q. You decline to reply?
A. I decline to reply as a privileged question.
Q. Will you state the full name of Mr. Dillon?

Same objection.

A. That is also a privileged question. I decline to answer.
Q. Decline to answer that?
A. Yes, sir.
Q. Will you state the full name of Mr. Goetz?

Same objection.

1197 A. I will make the same reply to that that I did to the other.
Q. When did you first make the acquaintance of Mr. Dillon?
A. I will make the same reply to that that I did to the other.
Q. How long have you known Mr. Dillon?

Same objection.

A. That is a privileged question and I decline to answer on that ground.
Q. When did you first make the acquaintance of Mr. Goetz?

Same objection.

A. I will make the same reply to that question.
Q. How long have you known Mr. Goetz?

Same objection.

A. I make the same reply to that question.
Q. That is you decline to answer?
A. I decline to answer.
Q. When you say you make the same reply, you mean you decline to answer?
A. I decline to answer on the ground of it being a privileged question.
Q. Do you know John F. Beyers of Minneapolis?

Same objection.

A. I decline to answer that as a privileged question.
Q. Have you ever seen John F. Beyers?

1198 Same objection.

A. I decline to answer that on the ground that it is a privileged question.
Q. Did you visit Mr. John F. Beyers in Minneapolis, or call upon -- in Minneapolis, in the summer or fall of 1901?

Same objection.

Q. In relation to a proposed suit against this company?

Same objection.

A. I decline to answer that on the ground of its being a privileged question.

Q. Do you — Mr. Hervey H. Anderson, an attorney and counsellor at law in this city, who is now sitting in the court room?

Same objection.

A. Yes, sir.
Q. When did you make his acquaintance?

Same objection.

A. I decline to answer that as a privileged question.
Q. Did you solicit Mr. Anderson to become a party to this suit?

Objected to as incompetent, irrelevant, immaterial and impertinent, no foundation laid, and inadmissible under the pleadings and issues in the case.

A. I decline to answer that question on the ground that it is a privileged question.

1199 Q. Mr. Carter, I call your attention to Defendants' Exhibit 8, and ask you if you know in whose handwriting the words written in pen and ink at the top of the first page, as follows, are: "Milwaukee, Wis., Dec. 4th, 1900."

Same objection.

A. Are you ready for my answer?
Q. Yes.
A. Yes, sir, I know that handwriting pretty well, I guess.
Q. You may state in whose handwriting it is.

Same objection.

A. It is the handwriting of myself.
Q. Will you state whether you have before seen Exhibit 8, with the signatures attached to the bottom thereof, as it now is?

Same objection.

A. Do you want me to say if I have seen the paper——
Q. Before today.

Mr. DILLON: I want it to appear here that there has been a ruling by Judge Kohlsaat of the circuit court here to the effect that any matter which is introduced for the purpose of showing that this case was not brought in good faith, or any matter which brought Mr. Carter in as an issue, the witness on the stand, that he could not and would not compel the witness to answer. The ruling was made in open court before Judge Kohlsaat.

1200 Mr. MITCHELL: We object to the introduction of that into the record, on the ground that it is not material and not proper evidence of the facts stated by Mr. Dillon.

A. Are you ready for my answer?
Mr. PALMER: Yes, sir.

A. Yes, sir, I have seen that paper before, necessarily, from the fact that I have identified my handwriting.

Q. You had it in your possession after it was completed, with the signatures attached, did you, Mr. Carter?

A. Yes, sir.

Q. And you mailed it to the insurance commissioner of Wisconsin, didn't you?

Mr. DILLON: That is objected to. Each one of these last questions I move to strike out as immaterial.

A. Are you ready for my answer?

Mr. DILLON: It is objected to as incompetent, irrelevant, immaterial, and inadmissible untler the pleadings.

A. Yes, sir, I sent that document to the insurance commissioner of Wisconsin.

Mr. PALMER: On or about December 4th, 1900?

Same objection.

A. On or about.

Q. You sent it to him through the mail, the Government mail?

Same objection.

A. Are you ready for the answer?

1201 Q. Yes.

A. Yes, sir, I sent it by mail.

Q. Do you know who prepared this Exhibit 8, the first two pages of it?

Objected to as incompetent, irrelevant and immaterial, and inadmissible under the pleadings.

Mr. GOETZ: I would like to ask if that is in connection with this case.

Mr. PALMER: We insist that it is, decidedly.

Mr. DILLON: The question has been ruled on by Judge Kohlsaat here and Judge Lochran, of St. Paul, and I move that all those answers regarding that be stricken out.

A. Are you ready for an answer?

Mr. PALMER: Yes, ready for the answer.

A. I don't believe I care to answer any more on that question.

Q. I will ask you if you did not compose pages 1 and 2 of Exhibit 8 and cause all that part of Exhibit 8 to be printed?

Same objection.

Q. All that part of Exhibit 8 to be printed which is printed?

Same objection.

A. I decline to answer that on the ground that I cannot see what it has to do with the issues in this case, unless the court directs me to.

Mr. PALMER: I will offer in evidence Defendants' Exhibit 8.

1202 Mr. DILLON: That is objected to as incompetent, irrelevant and immaterial, impertinent, inadmissible under the issues and pleadings in this case, and also as not *not* being properly identified.

Mr. PALMER: Do you recollect an application which was made in or about the year 1897 to the insurance department of Wisconsin, in the name of one Bodden, of Milwaukee, to have the license to this defendant company revoked?

Same objection.

A. I decline to answer that question.

Q. Did you prepare a petition and procure Mr. Bodden to sign it and submit it to the insurance department of Wisconsin in and about the year 1897, in which it was asked that the license of this company be revoked?

Same objection.

A. Unless directed by the court to answer that question I decline to answer it.

Q. In June, 1900, in the city of Milwaukee, did you prepare and send out, or cause to be sent out to some of the members of the defendant company, a circular letter signed, or purporting to be signed by yourself, calling them to attend a meeting?

Same objection.

Q. Of the members of the company?

Same objection.

1203 A. I decline to answer the question unless I am directed to do so by the court.

1204 Q. Do you remember the fact of an indictment being found against the officers and trustees of the defendant company by a Federal grand jury in the spring of 1899 at Milwaukee?

Same objection.

Q. And the quashing of that indictment?

Same objection.

A. I decline to answer that question unless directed to do so by the court.

Q. Didn't you appear before the grand jury in that case and do a large amount of work in the preparation of that document which Judge Seaman quashed, known as the indictment referred to?

Mr. DILLON: That is objected to as incompetent, irrelevant, im-

material, impertinent and not the best evidence, and not material to the issues in the case.

A. I decline to answer that question unless directed by the court.

Q. After the quashing of the indictment referred to did you not devote much time to the preparation of what you proposed to be a second indictment against the officers and trustees of the defendant company?

Same objection.

A. Are you ready for my answer?

Q. Yes.

1205 A. I decline to answer that question unless directed to do so by the court.

Q. I call your attention to Defendants' Exhibit 9 and ask you if you know in whose handwriting that document is?

Same objection.

A. Are you ready for an answer?

Q. Yes.

A. I decline to answer that unless ordered to do so by the court.

Q. As a matter of fact that portion of Exhibit 8 written in ink is in your own handwriting, isn't it, Mr. Carter?

Objected to as incompetent, irrelevant and immaterial.

A. I decline to answer the question unless the court directs me to.

Q. Mr. Carter, almost immediately after the filing of the indictment referred to in the previous question in this examination, you were engaged in attempting to secure the appointment of yourself as a receiver for the company, were you not?

Same objection.

Q. (Question read.)

A. I decline to answer that question unless the court directs me to.

Q. You were engaged from about the 1st of May, 1899, down to nearly the close of that year in endeavoring to induce parties to join with you in — attempt to wreck this company and to

1206 secure for yourself the appointment of the receiver and some $40,000 or $50,000 in cash from these funds.

Objected to as incompetent, irrelevant, immaterial and impertinent and not admissible under the issues of the case, not the best evidence and as calling for the conclusion of the witness?

A. Are you ready for the answer?

Q. Yes.

A. I decline to answer unless the court directs me so to do.

Q. Did you enter into a copartnership agreement with Mr. E. P. Kenyon for the purpose of either securing the appointment of a receiver for this company or compelling the company to pay to you,

or to you and him, a large sum of money, many thousands of dollars, to induce you to cease attacks on the company?

Same objection.

A. I decline to answer that question unless the court directs me so to do.

Q. Did you in the summer of 1899 prepare the draft of a contract you proposed to have executed by yourself and two or three other parties looking to the institution of proceedings of the appointment of yourself as receiver and the division of the spoils among you?

Same objection.

A. I decline to answer that question unless the court di-
1207 rects me to.

Q. I call your attention to Exhibit 10, consisting of a printed pamphlet or circular, and ask you if you have before seen a copy of that?

Mr. DILLON: That is objected to for the same reason, and also that it speaks for itself.

A. I decline to answer that question unless the court directs me to.

Q. I will ask you, Mr. Carter, if you did not compose Defendants' Exhibit 10?

Mr. DILLON: The same objection, and I want to make another objection here that this has not been introduced in evidence, and consequently is no exhibit in the case.

Mr. PALMER: Did you cause Defendants' Exhibit 10 to be printed?

Same objection.

A. The same reply.

Q. Did you cause it to be copyrighted?

Mr. DILLON: The same objection, and also that the document speaks for itself.

A. How is that?

Mr. PALMER: Will you answer the question?

A. I decline to answer the question as originally put unless directed to do so by the court.

1208 Q. Did you circulate or publish or distribute Defendants' Exhibit 10 in or about the year 1896 or subsequently among the members of the company or among the public at all?

Same objection.

A. I decline to answer that question unless the court directs me to.

Q. I call your attention to Defendants' Exhibit 11, with the ex-

ception of the two words in lead pencil, "Mr. Burke" and ask you if you know in whose handwriting that is?

Objected to as incompetent, irrelevant, immaterial, impertinent and not admissible under the pleadings.

A. I decline to answer that question unless the court directs me to.

Q. I call your attention to Defendants' Exhibit 12 and ask you to state if you know in whose handwriting that portion of the exhibit which appears to have been written by pen and ink is?

Mr. DILLON: The same objection, and also that there has no Exhibit 12 yet been introduced.

A. I decline to answer that question unless the court directs me to.

Q. I call your attention to a letter bearing date Milwaukee February 25th, 1900, addressed "Dear Kenyon" purporting to have been signed by Edmund David Carter, which is marked in red
1209 ink Exhibit B, and which is attached to and constitutes a part of the affidavit of E. P. Kenyon sworn to the 18th day of November 1901 before Walter G. Brown a notary public, county of Cook, State of Illinois, which affidavit is a part of the papers used upon a motion in this action and were filed in the office of the clerk of the United States circuit court for the district of Minnesota, third division, on November 27th 1901, and ask you to state if you know in whose handwriting that exhibit, other than the identification mark is?

Mr. DILLON: That is objected to for the same reasons and also that the document has not been properly identified and put in evidence?

A. I decline to answer that question unless the court directs me to.

Q. I will ask you whether or not commencing with the year 1896 down to the present time you have not been persistently and continuousl- endeavoring to discredit the defendant company, have a receiver appointed for it, and its affairs wound up?

Objected to as incompetent, irrelevant, immaterial, impertinent and no foundation laid and not admissible under the pleadings.

A. Unless directed to by the court I decline to answer.

Q. Are you admitted to practice the profession of law in any Federal court of the United States or in any court of record of
1210 any State of the United States?

Same objection.

A. Unless directed to by the court I decline to answer that question.

Q. Have you ever been a policy or certificate holder in the defendant company?

Same objection.

A. The same answer.

Q. Have you ever been interested in the defendant company in any way other than for the purpose of wrecking it?

Mr. DILLON: I make the same objection and also that there is no foundation for the question.

A. I decline to answer that unless the court directs me to.

Mr. PALMER: Have you ever been authorized to represent any member of this defendant company in any attack upon this company either by way of law suits or by the circulation of any matter which might tend to discredit it?

Mr. DILLON: I make the same objection and also that there is no foundation laid for the question.

A. Unless directed to do so by the court I decline to answer that question.

Q. Were you ever employed by any member of this com-
1211 pany to collect any claim or any alleged claim he claimed he had against the defendant company?

Same objection.

A. I make the same answer.

Q. Have you ever been employed by any member of the defendant company to prosecute any action against this company?

Same objection.

A. Unless directed to by the court I decline to answer.

Mr. DILLON: I want it to appear on the record that all these papers that they have attempted to introduce and that have been marked exhibits, are objected to and the motion is made here to strike them out, basing that motion on the objections already made and upon the further fact that they have not been identified, and if there are any questions in regard to this attempted line of evidence—if there has any question been asked and no objection made in apt time, I move now to exclude the answer to that question, for the reasons as stated above.

(Cross examination waived.)

EDMUND D. CARTER.

MARSHALL E. SAMPSELL,
Clerk Circuit Court of the United States,
Northern District of Illinois, Commissioner.

Subscribed and sworn to before me this 1st day of May, A. D. 1902.

MARSHALL E. SAMPSELL,
Commissioner.

1212 WALTER S. DILLON, a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Mitchell, and testified as follows:

Q. What is your name?
A. Walter S. Dillon.
Q. Where do you reside?
A. I reside in Cook county, Illinois.
Q. What is your occupation?
A. Lawyer, practicing law.
Q. When were you admitted to the bar?
A. I was admitted—what bar do you refer to?
Q. When were you first admitted to practice law in any court in this State, in a court of record?
A. I was admitted in the supreme court of this State in June, 1900.
Q. Had you ever been admitted to any court of record prior to that time?

Objected to as irrelevant, immaterial and incompetent, and as inadmissible under the pleadings.

A. No, sir.
Q. How old are you, Mr. Dillon?

Same objection.

A. I have no hesitancy in telling you, but I do not think a court would direct me to answer that.
Q. If you decline to answer, why say so.
A. I am 27 years of age.
1213 Q. When did you first become acquainted with Mr. Edmund D. Carter?

Objected to as immaterial, irrelevant, incompetent, impertinent, and inadmissible under the pleadings.

A. I claim that as a privileged communication. Unless directed by the court I refuse to answer.
Q. You are one of the solicitors for the complainants in this case?

Same objection.

A. Yes, sir.
Q. Has Mr. Edmund D. Carter done any work in your office or assisted you in the commencement or prosecution of this suit?

Same objection.

A. I claim my privilege in that regard.
Q. Do you decline to answer?
A. As being a privileged communication.
Q. I did not ask you for any communication; I asked you for a

fact, as to whether or not he had been in your employ and done any services in connection with this case.

A. I decline to answer for the reason given.

Q. Did Mr. Carter come to you or your partner and suggest the commencement of this suit?

Same objection.

A. I refuse, on the same grounds as before.

1214 Q. Did you prepare or cause to be prepared and issue under your letter-heads any circular letter, addressed to the members of the Minnesota Mutual Life Insurance Company in regard to this suit?

Objected to as incompetent, irrelevant and immaterial and inadmissible under the issues.

A. I decline to answer as being a privileged communication.

Q. I show you Defendants' Exhibit 4, and ask you to state if you know where that paper was prepared and by whom.

Same objection.

A. I decline to answer that on the ground that I claim it to be a privileged communication.

Q. I will show you Defendants' Exhibit 5, and ask you to state if you know where that paper was prepared and by whom.

Same objection.

A. I decline, for the same reason.

Q. I show you Defendants' Exhibit 3, and ask you to state if you know whether or not that is one of your firm envelopes.

Objected to as incompetent, irrelevant, immaterial, impertinent, and not admissible under the pleadings.

A. The same answer.

Q. You refuse to answer, do you?

A. Yes, sir, I decline to answer on the same grounds.

1215 Q. Isn't it true that Mr. Edmund D. Carter furnished you with the alleged information and data on which this suit was commenced, and suggested the commencement of it to you?

Same objection.

A. I decline to answer that unless so ordered by the court.

Q. Do you recollect the fact that an application was made to the court in this action, to make certain parties additional parties complainant to this suit?

Mr. GOETZ: The same objection; the record shows for itself.

A. I decline to go into that on the ground that it is a privileged matter.

Mr. MITCHELL: Do you recollect that such an application was made?

Same objection.

A. I decline to go into that on the ground of privileged communications.

Q. Was the petition of J. C. Iverson and Samuel Wright, together with a list of the parties desired to be made additional parties in this suit, which was used and filed in that proceeding, prepared in your office?

Same objection.

A. The same refusal to answer.

Mr. GOETZ: The records show for themselves, and the record also shows who all the attorneys are and who filed all the papers in this case, and it is impertinent to ask these attorneys to show anything at all in regard to this matter.

A. I decline to answer, unless so ordered by the court.

1216 Mr. MITCHELL: Did that list of persons who were or claimed to be members of the defendant company, and who made application at that time to be made parties, include the names of all persons who had authorized you at that time to represent them in this case?

Mr. GOETZ: That is objected to as immaterial, irrelevant and incompetent, and inadmissible under the pleadings.

A. I decline to answer that, and decline to go into that subject. However I want to state there was the name of no one presented there except who gave a *bona fide* power of attorney in writing to do so.

Mr. MITCHELL: Had any other person than those names who appear in that application at that time authorized you at that time to institute proceedings on their behalf or to prosecute their claims against this company?

Same objection.

A. I decline to answer that as being a privileged communication.

Q. Had you received powers of attorney from any other persons than those named in that application, authorizing you to represent them in this suit?

Same objection.

A. I decline to answer for the same reason.

Q. Had you ever personally met Mr. John F. Byers, the counsel for the complainants?

Same objection.

A. I decline to answer that unless so ordered by the court.
Q. Did Mr. Edmund D. Carter prepare or take any part in the preparation of the bill of complaint in this cause?

ime objection.

I decline to answer for the same reason.
Did you ever receive or see a copy of the affidavit and moving ers that were used and filed by the defendants in this cause on motion to require the complainants to give security for costs?

r. GOETZ: That is objected to *that* incompetent, immaterial and evant, inadmissible under the pleadings, and because the record rs what the papers are.

I will state that I have kept informed in this case, and what-knowledge I have I consider it my duty not to divulge as nst my clients.
r. MITCHELL; Did you ever receive a copy of these affidavits I refer to?

ime objection.

We had been kept informed on the case, and what information ve I consider privileged, and I decline to answer the question.
Do you claim you are privileged from disclosing any facts in rd to papers that were served on you by the opposing counsel ie case.

ime objection.

A. I claim under the law my right as well as my duty not to divulge any facts in this case which I have obtained being attorney in the case.
Did you ever attempt to investigate the truth or falsity of the ges made in the affidavits that I refer to?

ime objection.

I do not have in mind—I have in mind this, that I believe it t my duty to go into the matter.
What?
It is not my duty to go into this matter at all; it is my duty o.
Do you decline to answer the question?
I decline to answer it for that reason, that it — my duty not o so.

oss examination waived.

WALTER S. DILLON.

ubscribed and sworn to before me this 9th day of May, A. D.

MARSHALL E. SAMPSELL,
Commissioner.

1219 ALBERT GOETZ, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Mitchell, and testified as follows:

Q. What is your full name?
A. Albert Goetz.
Q. Where do you reside?
A. 1540 Dunning street, Chicago.
Q. What is your occupation?
A. Attorney at law.
Q. Are you one of the solicitors for the complainants in this case?
A. Yes, sir.
Q. When were you admitted to the bar, Mr. Goetz?

Mr. DILLON: That is objected to as incompetent, immaterial, irrelevant, inadmissible under the pleadings, and no foundation for the question.

A. I do not know as it makes any difference whether I answer the question or not. I was admitted at the same time Mr. Dillon was.

Mr. MITCHELL: Have you been in partnership with him ever since?

Objected to as immaterial, incompetent, irrelevant, inadmissible under the pleadings and no foundation for the question.

A. I decline to answer that quesrion.
Q. How old are you, Mr. Goetz?

Same objection.

1220 A. I am 34 years old—35, not quite.
Q. Do you know Mr. Edmund D. Carter?

Same objection.

A. I decline to answer that question.
Q. Did Mr. Carter at any time assist you in the prosecution of this suit?

Same objection.

A. I decline to answer that question on the ground that as an attorney in this matter I believe — have the privilege of keeping all the information that there is in the case to myself.
Q. Has Mr. Edmund D. Carter ever been in your employ?

Same objection.

A. I decline for the same reason.
Q. Did Mr. Carter assist you in the preparation of the bill of complaint in this cause?

Same objection.

A. I answered that question before.
Q. What is your answer?
A. I decline to answer it.
Q. Did Mr. Carter place in your hands the alleged information or data on which this suit was commenced?

Same objection.

A. I think it is my duty as an attorney to withhold any information that I may have in regard to this matter in which my clients are interested.

Q. What is your answer to the question? Do you
1221 decline to answer?

A. I decline to answer.
Q. I show you Exhibit 4, and ask you where that paper was prepared and by whom.

Same objection.

A. I decline to answer that question. For your information, Mr. Mitchell, I——

Mr. DILLON: I object.

The WITNESS: It don't make any difference.
Mr. MITCHELL: Have you got any further answer?
A. I wish to say that as far as the matter is concerned—the case itself is concerned, Dillon & Goetz have done the work in it.
Q. You mean in regard to the prosecution of the suit in court do you?
A. As the attorneys in this case.
Q. Isn't it true that Mr. Carter has assisted you in the collection of data and the soliciting of members, and so forth, in regard to this case?

Same objection.

A. I decline to answer that question.
Q. When you say you did the work in this case do you mean you prepared this Exhibit 4 to which I referred?

Same objection.

A. I decline to answer the question.
Q. I show you Defendants' Exhibit 5, and ask you to state, if you know, where that paper was prepared and by whom.

Same objection.

1222 A. It is the one you just showed me, Mr. Mitchell.
Q. Exhibit 5.
A. Why, I decline to answer the question.
Q. I show you Defendants' Exhibit 3, and ask you whether or not that is one of your firm envelopes (handing witness paper)

Objected to as incompetent, irrelevant and immaterial.

A. I decline to answer the question.

Q. I will ask you to state whether or not a large number of papers, such as Exhibits 4 and 5 referred to, were not made under your letter-heads—under your direction or with your consent, to various members of the company.

Same objection.

A. I decline to answer the question. I decline to answer the question on the ground that as the attorney I am privileged to keep all that information to myself.

Q. Do you recall the fact that an application was made by the complainants in this cause to have a large number of persons who were or claimed to be members of the company, made additional parties complainant?

Same objection.

A. I decline to answer that question.

Q. I will ask you whether the petition of J. C. Iverson and Samuel Wright to make certain persons additional parties complainant in this suit, together with a list of the persons desiring to be made parties, which petition was filed in the cause, was prepared in your office?

1223 Same objection.

A. I decline to answer. The records will show for themselves just what the papers are.

Q. At the time that petition was prepared and filed had your firm received authority from any other person except those named in that application to represent them in this case or make them parties thereto?

Same objection.

A. I decline to answer the question. I consider it my duty not to answer it.

Cross examination waived.

ALBERT GOETZ.

Subscribed and sworn to before me this 8th day of May, A. D. 1902.

MARSHALL E. SAMPSELL,
Commissioner.

224 HERVEY H. ANDERSON, being first duly sworn on behalf of defendants, was examined in chief by Mr. Palmer, and stified as follows:

Q. Your full name is Hervey H. Anderson?
A. It is.
Q. You are a resident of the city of Chicago?
A. I am.
Q. Have been for how many years?
A. Thirty-two.
Q. You are a practicing lawyer and counsellor at law?
A. I am.
Q. And have practiced your profession for how many years?
A. 30 years.
Q. The gentleman sitting at your right, Mr. Anderson, is Mr. dmund D. Carter; did you ever see that gentleman before?

Objected to as incompetent, irrelevant, immaterial, impertinent, d not admissible under the issues in the case.

A. I have.
Q. The gentleman in front of you and to the right is Mr. Dillon, the law firm of Dillon & Goetz; have you ever see- him?

Same objection.

A. I have.
Q. And the gentleman in front of you, to the left, is Mr. 225 Goetz of the firm of Dillon & Goetz; have you ever met him?

Same objection.

A. I think not; not to have any conversation with him.
Q. You have had interviews with Mr. Dillon and Mr. Carter?

Same objection.

A. I have.
Q. With which of these two men did you first have an interview?

Same objection.

A. With Mr. Dillon.
Q. State whether or not that was in relation to your membership n the defendant company?

Same objection.

A. It was.
Q. Where did that conversation take place?
A. In my office in the Unity building.
Q. In Chicago?
A. In Chicago, yes, sir.
Q. To the best of your recollection when did that interview take place?

Same objection.

A. Some time last fall. I can't remember whether it was in October or November.

Q. Will you state the substance of that conversation as you recollect it?

Same objection.

1226 A. I had received a circular as a member of the Bankers' Life Association of Minnesota, which requested me to call on the firm of Dillon & Goetz, it having stated some things contrary to the good standing of the company, and as I was a member—and within a day or two after I received a circular, I generally took luncheon in the basement of the Masonic building in the city of Chicago, in which building their offices are located—I called at their offices, the offices of Dillon & Goetz. I did not find Mr. Dillon in, but I left my card.

Q. Did you find any one in?

Mr. DILLON: That is objected to, and I move that part of the answer, after he says he received a circular letter, be stricken out as not being responsive to the last question, and also objected to for the reasons above given.

Mr. PALMER: My question was, Mr. Anderson, the substance of the conversation which took place between you and Mr. Dillon in the Unity building. I do not know but what you were starting to give that.

A. Yes, sir.

Q. You may proceed then.

A. In pursuance of my leaving my card——

Objected to.

The WITNESS: Well, he called on me in my office and asked me if I was a member of the Bankers Life. I told him I was and he said that he had received a card which I had left for him, and

1227 he began to make a statement of what the condition of the company was.

Q. What did he state?

A. He stated that the company was in a very bad condition.

Mr. DILLON: That is objected to.

The WITNESS: That it was——

Same objection.

A. —liable to become bankrupt, that the funds were being dissipated and misappropriated; that the men in charge of it were an irresponsible body of men, a very bad lot generally, and made a great many other statements which tended to and did discourage me in regard to the company.

Mr. DILLON: I move that the last part, regarding a great many

other statements, be stricken out as not responsive and as being too general.

Mr. PALMER: You understand his point as a lawyer, Mr. Anderson?

A. Yes, sir; well, I asked him in what manner it was being done. Well, he said that they were diverting the company from its original purpose as a mutual company into an old line company, and that they were using the funds which had been collected from the old members for the purpose of paying the losses under a new scheme, and that this firm had filed a bill.

Q. That is the firm of Dillon & Goetz?

Same objection.

A. Yes, sir, his firm has filed a bill for the purpose of having a reciver appointed for the company and winding up its
1228 affairs. I tried to go into particulars with him in regard to it, and asked him a great many questions, and he was not at that time prepared to answer them.

Mr. DILLON: I move to strike the last part of that answer out.

A. He said he was not prepared to answer, and our interview lasted over—it probably lasted an hour; we talked back and forth in regard to the matter, and I told him I was not satisfied to have the company change its purpose, that I did not think the company had any right to solicit members of my class as I designated the old members, and take their support away from the fund that I expected to have my policy paid out of, and he said that was so; we agreed upon that. And then I began to ask him about the amount of the funds and about the amount of the losses, and what had been paid, and other losses, and what the assets of the company were, and he could not, or he did not and could not—he said he could not give me a definite answer in regard to those matters, but he said that Mr. Carter, who had a desk in his office, was well informed about all these matters, and that if I would call over and see Mr. Carter I could get full information, or he said he would send Mr. Carter over to me, and he said he would like to have me join in with the other members—with the other complainants in this bill, for the purpose of having the affairs of the company wound up. When I told him that I did not think it was an
1229 advantage to me to have the affairs of the company wound up if it was a solvent company, and that I had a good contract with the company, as I believed, and I should hold them to it, but disagreed with the policy of the company, "Well," he said, "I will send Mr. Carter over to you." I cannot remember all, but I can remember substantially all he said that day.

Q. That is the substance of it?

A. That is the substance of what we said. Now a few days after Mr. Carter called on me——

Objected to as immaterial and not responsive.

Q. That is the gentleman who has been pointed out to you as Edmund D. Carter?

A. Yes, sir, he introduced himself as Carter.

Q. Did he present a card?

Objected to as immaterial, incompetent and irrelevant.

A. I don't remember. I think not; but it is the same gentleman who is now beside Mr. Dillon, and we had a long conversation in regard to the matter, and entered more into details; he seemed to be very well informed. He told me that he had been studying the company for five or six years.

Mr. DILLON: I object to that as immaterial and not responsive, and I move to strike out the answer.

Mr. PALMER: We will go back. Did Mr. Carter call after your interview with Mr. Dillon?

A. Yes, sir, I said so.

1230 Q. He objected to that on the ground that it was not responsive to my question. He did call on you in your office in the Unity building,—Mr. Carter did?

Same objection.

A. Yes, sir.

Q. How long after Mr. Dillon called?

Same objection.

A. Two or three days.

Q. And introduced himself as coming from Messrs. Dillon & Goetz's office?

Mr. DILLON: I make the same objection, and also as leading.

A. He did.

Mr. PALMER:

Q. What did he say when he first came in?

Objected to as incompetent, irrelevant and impertinent.

A. He introduced himself to me and said that Mr. Dillon had informed him that I would like to see him in regard to the condition of the Bankers Life, and that he came fully prepared to give me whatever information that he had, and he said he had full information, in regard to the condition of the company, and I asked him how he obtained that information, and he said that he had been examining the books of the company and the affairs of the company for several years, and that he knew all about the company, knew what its condition was, and he told me that the company's

1231 assets were being dissipated, that its funds were being diverted

Mr. DILLON: I object also to the answer as not being the exact words that were used, and that the answer does not purport to be the exact words used on that occasion, and move it be stricken out on that ground.

A. They were in substance this; that the company's affairs were being mismanaged, that its assets were being misappropriated, that the funds that had been collected were being diverted from their proper sources; that the officers were a reckless set of men; and I remember very well of saying that I could hardly believe that, for I had been and was then associated with Gen. Sanborn, I had retained Gen. Sanborn in a case, and I thought that he was a good man, and that I could hardly believe that the affairs were being so badly handled under those circumstances; at the same time I told him that I was very much opposed to the company changing its policy, because I thought I had got a good contract out of the company and I had lived up to my contract for about eight years, paid my premiums, and I thought that if the company solicited members of my class, either by coercion or by threats, to raise premiums, or in any other manner, that they could be stopped. I told him that that was my opinion. He said, "That is the proposition we make,—that is the ground we take." "Well," I said, "I take that ground, too, very strongly;" and said I,

1232 "I have written to the company to the same effect;" and he said the bill had been filed, and represented to me that there were about six hundred complainants that either had joined in the bill or were about to join in the bill, and that they were very anxious to have me join with them. Well, I said that I could not see my way clear just at that time to join with them, that I would have to have more evidence before I would help to attempt to wreck the company, because, I told him, I said, "That is what it amounts to; your proposition means to wreck the company." He did not deny that.

Mr. DILLON: That is objected to as not responsive, and I move to strike it out.

A. Well, I may say—I think I can safely say that he admitted that that would be the effect of their success, if they succeeded in having a receiver appointed and an accounting taken, that the company would be wrecked. Well, inasmuch as I had gone into the company in good faith, and paid my premiums in good faith, I felt pretty blue about it, and told him that I would look further into it, and see him or Mr. Dillon again. I think that is about the subject of our interview then, although he did then give me some figures showing what had been done, or what was going to be done by the officers of the company, towards dissipating the fund.

Mr. PALMER: That is what he claimed they were doing?

A. Yes, sir, what he claimed they were doing.

1233 Q. Did you have any subsequent interview with either Mr. Carter or Mr. Dillon?

A. Yes, sir, I had another interview with Mr. Dillon—I think I had two more interviews with Mr. Dillon.

Q. Where did the next one take place?

Objected to as incompetent, irrelevant and immaterial, and not admissible under the pleadings.

A. At their office.
Q. At their office?
A. Yes, sir.
Q. At the Masonic temple?
A. At the Masonic temple.
Q. About when did the next one occur?

Same objection.

A. Well, I think the next one I had was probably a month after that. I was in the building, and I called in to see Mr. Dillon at that time to ascertain the progress of the case and what had been done, and he said that the case was going along very well, that they were bound to win it, and that they would have a receiver appointed within a very short time.

Mr. DILLON: I object to that last and move that it be stricken out as not being responsive.

Mr. PALMER: The next one you say was about a month afterwards?

Same objection.

Q. If you will be kind enough, Mr. Anderson, state the substance of the conversation that occurred at that time.

1234 Same objection.

A. In substance just as I have stated.
Q. They have moved to strike that out.
A. I will repeat that just as I have stated.

Mr. DILLON: Object to that as immaterial and irrelevant.

The WITNESS: If that is satisfactory.
Mr. PALMER: Yes.
A. Well, I will repeat it if necessary.
Q. I wish you would repeat it in words.
A. I asked him how the case was getting along, what they were doing about it, and what the condition of the company was, and the status of the suit, and he said they were going along all right, and that they were very enthusiastic in regard to it; that they were surely going to win it, and they would very soon have a receiver appointed for the company, to wind up its affairs. And I asked at that time if Mr. Carter was in, but he was not.

Mr. DILLON: I move that be stricken out as not responsive.

Mr. PALMER: Was there anything further at that conversation that you recollect, Mr. Anderson?

Objected to as incompetent, immaterial and irrelevant.

A. No, that was the substance of our conversation at that time.
Q. Now when did you next have an interview——

Objected to.

A. I may say, however,—yes, there was; he still thought
1235 that I ought to go in to join with them.
Q. What did he say?

Same objection.

A. Well, he said he would like to have me join with them in the prosecution of this suit, as I was an active member and a paying member, and they would like to have men of my status in the company join in the suit. I think again—well, I know that again I said, "I do not see what the purpose of your suit is—I can't see what the purpose of it is."

Mr. DILLON: That is not responsive, and I move it be stricken out for that reason.

A. He replied the purpose of the suit was to compel the company to surrender their property and wind up their affairs.

Mr. DILLON: That is objected to as not purporting to be in the language of the parties quoted.

A. That was the substance of it.

Mr. DILLON: And also as immaterial and hearsay evidence.

The WITNESS: I have no doubt but that was almost the exact language, because I never left either Mr. Carter or Mr. Dillon under any other impression than that the purpose of the suit was to have the affairs of the company wound up by a court of chancery.
Mr. PALMER: When was the next interview that you recollect?

Same objection.

A. Well, that probably was about two or three months ago.
1236 Q. And with whom was that?

Same objection.

A. My first interview was with Mr. Dillon.
Q. That is on this last occasion?
A. Yes, sir.
Q. Where was that?

Same objection.

A. That was at his office in the Masonic temple.

Q. Will you please state the substance of that conversation as you recollect it?

Mr. DILLON: I object to that as irrelevant, incompetent and immaterial, and also hearsay evidence.

A. He said that the case was about to be reached on some sort of a motion, demurrer, or something of that kind, and that they expected some decisive results at once, and in the mean time I may be permitted to say that I had had a conversation with Mr. Kenyon and Mr. Egan of the company.

Mr. DILLON: I object to that, and move to strike out the answer as not responsive, and as hearsay evidence.

The WITNESS: But I told Mr. Dillon that I was very much concerned in the suit, that I had eight years' premiums paid into the company, and did not feel like having the company wrecked, did not feel as though I ought to lose—or that my family should lose any insurance in case of my death, and that I thought the
1237 matter should be settled. Said I, "I do not see any reason why the matter should not be settled, and asked him "How many people do you represent, real people do you represent, who actually have got rights in this company?"

Mr. DILLON: That is objected to as not responsive and inadmissible.

The WITNESS: I said, "I understand that you have been offered $50,000, or that it has been said that you were offered $50,000 to settle this suit." He said, "No, we have never been offered $50,000 to settle the suit, nor we have not been offered anything to settle the suit." "Well," I said, "I am a partner in this concern, and it is to my interest to have this thing settled because I would like to have the business go on and be prosperous, and not to kill it." And I said, "I believe I can bring about a settlement if you people will be reasonable." I told him at the time, "I have got no authority about it, but" I said, "I never saw a law suit that could not be settled in some way or another and be satisfactory to all parties." I said, "What can you get out of it for your clients? Now what is the best you can get out of it for your clients?"

Q. You stated you asked him how many persons he represented?

Same objection.

A. Oh, yes. I think he said about fifty or sixty, and I asked him about how much each one had paid. I said, "Do you expect to get anything more out of it than the premiums which they
1238 have already paid?"

Mr. DILLON: I move that be stricken out as hearsay evidence.

A. He said no, he could not expect to get anything more out of it

an that. I said, "Now that can't amount to much more than 500 or $600 apiece."

Mr. DILLON: I move that be stricken out as not responsive, hearsay evidence and as immaterial and irrelevant.

A. "And probably not that much." Of course I didn't know; was simply making rough guesses myself. Now I said, "Suppose hat I should get the company to agree to pay you or your clients bout the amount which they could recover in any event, you do ot need to have any more clients than you have got now, you can ettle for your own clients, and you are not concerned about anyody who has not already joined in your bill, and you will get your ees out of any recovery that you may have for them, and a decree an go in the case which shall bind your clients, and will be a precdent, and you folks need not have anything more to do with the ompany; simply drop out and let the affairs go on." "Well," he aid, "I cannot make any settlements of that kind." "Well," I aid, "there is no legal objection to your doing it. I have seen lots nd lots of cases settled just on such basis as that, and everyhing went along smoothly afterwards. But," said I, "I am very much interested in having this matter settled, because 1239 this suit is certainly hurting the company's business." I tolf him at that time that I had no authority from anybody connected with the company in any way to make any proposition to him, but I thought as a member of the company I had a right to interfere to stop the litigation. Well, we had considerable talk on the same line for some time, and then he referred me to Mr. Carter.

Q. What did he say in substance?

Mr. DILLON: I move all this be stricken out as not responsive, and especially as being hearsay evidence, and also to the question.

Mr. PALMER: You say he referred you to Mr. Carter?

Same objection.

A. Yes, sir.

Q. What did he say about Mr. Carter?

Same objection.

A. He said, "Now you had better talk to Mr. Carter about this, and see what you can do with him, and what he says about it;" and then I went out—Mr. Carter had a little desk in the outside of the office, and I went out and had a long talk with Mr. Carter on the same lines, and the substance of the conversation between Mr. Carter and myself was substantially the same as I had had with Mr. Dillon.

Q. What reply did Mr. Carter make?

1240 Same objection.

A. Mr. Carter said, "You better see what you can do with the company, what you can get from the company, before you come to us." Well, I said I would do that. I said, "I am anxious to have this thing settled. I have had some particular savage correspondence with the company on my own account," and I think when they were in my office I read to them some of the letters I had written to the company in regard to it,—I know I did, certainly to Mr. Carter.

Objected to as not responsive, immaterial and as hearsay.

The WITNESS: And Mr. Carter said, "Well, you better see the company and see what you can do." And I left them with that understanding. Now that is the last time I had any interview with them. I did see Mr. Kenna, I think, afterwards.

Mr. PALMER: That is an agent of the company?

A. An agent of the company.

Q. Mr. Anderson, you stated that in this conversation with Mr. Dillon, and in your subsequent conversation with Mr. Carter, you told them once or twice that you were in no way authorized to represent the company, and were acting on your own behalf, as a partner; now I want to ask you as a matter of fact whether you were at that time, or ever were in any way as a matter of fact, authorized by the company to represent it in any way?

1241 Same objection.

A. Not the least, not the slightest. I never had any intimation, I was a volunteer entirely. I would like to make that most emphatic, because I thought it was to my own interest to keep the company going.

Objected to.

Mr. PALMER: It may be understood that whenever you do not get an opportunity to get your objection in before the answer is in, you may have it recorded before the answer.

Q. Has any officer of the company ever intimated to you that they would pay one penny to get this case dismissed?

Same objection.

A. No; on the contrary, when I went to Mr. Kenna, after my last interview with Dillon and Carter, Mr. Kenna said they would not pay a damn cent.

Mr. DILLON: I move to strike out the answer as not responsive and as hearsay evidence.

A. My opinion was then that I had not better meddle in the matter any more.

Mr. PALMER: Now, Mr. Anderson, since these several interviews with Mr. Carter and Mr. Dillon, have you on your own account

made any investigation of the officers of the company and the management of the company and as to whether or not th- rights of the members were being protected?

Objected to as incompetent, irrelevant, immaterial impertinent and asking for the conclusion of the witness and not the best evidence.

1242

A. I have.

Q. What is your opinion now as to the wisdom of prosecuting this suit, you being a member?

A. I think it is disastrous. I think it can come of no good whatever. I think it can benefit no one whatever, certainly no member of the company.

Mr. DILLON: I move to strike that out as a conclusion of the witness.

Mr. PALMER: State whether or not from your investigations you have satisfied yourself that your direct rights will be protected, or have been, or will not be, or have not been.

Same objection.

A. I am of the opinion after investigation which I have made that if I should die in the next ten years my premium will be paid, that I have lived up to my part of the contract.

Q. You mean your policy, you said your premium.

A. Yes sir, my policy will be paid. It may be, under the present policy of the company that my premiums will be undoubtedly advanced. Let me state that, will you, because it is my opinion. I think that inasmuch as the company are not soliciting any more members of my class that as we grow older the death losses will have to fall upon us more rapidly than they would if you had continued on under your old policy under your old scheme, but I know of no law to prevent you from taking or or annexing a new scheme of insurance and working that under the legislature of the State or by your own will.

1243

Q. Provided the assets contributed by the old members are retained and protected for their interests?

Mr. DILLON: I make the same objection and also as leading and calling for the conclusion of the witness.

A. Yes sir, that is what I mean, I should have stated that anyway.

Mr. PALMER: Prior to the first interview with Mr. Dillon which you have related had you any personal acquaintance with that gentleman?

Same objection.

A. No sir.

Q. Prior to the first interview you had with Mr. Carter had you any acquaintance with that gentleman?

Same objection.

A. No sir, I never heard of him before I got the circular.

Same objection.

Q. In either of these conversations was there anything said about your contributing anything in case you should come into the suit towards expenses and attorneys' fees?

Same objection.

A. Well, my impression is that in the first interview that
1244 I had with Mr. Dillon that I was asked to contribute something towards the costs of prosecuting the suit but I could not be sure about that. I had several matters of the same kind on my hand at the same time where I was asked to contribute to bring suit but I could not testify that they did ask any contribution at all from me.

Q. I understood you to state that prior to the first interview with Mr. Dillon you had received some sort of a circular letter through the mail?

Same objection.

A. I did, yes sir.

Q. What did you do with that Mr. Anderson?

Same objection.

A. Oh I threw it in the waste basket.

Q. It was destroyed was it?

A. Yes sir.

Q. Was there any other paper enclosed with the circular?

Same objection.

A. I could not testify to that—oh I know there was a request that I should become a complainant in that suit—a co-complainant in the suit.

Q. Was there more than one paper in the envelope or two?

Same objection.

A. I don't remember, I could not tell you.

A. Do you recollect who this circular purported to be signed by or to come from?

1245 Same objection.

A. I do not. Some persons either in Milwaukee or Minneapolis.

Q. I call your attention to "Defendants' Exhibit 4" and ask you to read that (handing witness paper)?

Objected to as incompetent, immaterial, irrelevant and impertinent.

Q. And then to state whether that refreshes your recollection to any extent concerning the contents of that circular which you received?

Same objection.

A. This is a copy of the circular which I received. This is the first time my attention was called to the firm of Dillon & Goetz.

Q. Now attached to that or pinned to it is "Defendants' Exhibit 5" which purports to be addressed to Dillon & Goetz and is a skeleton form of the power of attorney to be signed by members?

Same objection.

Q. Does that refresh your recollection as to whether there was any other enclosure in the envelope which you received with the circular?

Same objection and also as leading.

Mr. PALMER: I asked him whether or not it does refresh his recollection?

1246 Same objection.

A. It does not. I have an impression that there was enclosed an authority to Messrs. Dillon & Goetz to act for me for that reason—and it was in response to this circular that I called on them at their office.

Mr. DILLON: I move to strike out the answer as not being responsive.

1247 Cross examination

By Mr. DILLON:

Q. How old are you, Mr. Anderson?

A. Fifty-five.

Q. You are acquainted with the agents of the company, Mr. Kenna, and some of the others of this company?

A. I am acquainted with Mr. Kenna.

Q. Were you ever solicited to become a member under the new guaranteed option policy plan?

Objected to as not cross-examination.

A. Shall I answer?

Mr. PALMER: Yes, certainly.

A. Yes, sir.

Mr. DILLON: What proposition was made to you, if any, in regard to the change?

Same objection.

A. Why a proposition was made that I should—oh, there have been three or four times that propositions have been made to me just about the time that that premium became due it was proposed that the agent would pay my then due premium or my premium about to become due, and that I should have time to pay the advance premium on the new policy.

Q. Now, do know, Mr. Anderson, that I was never in your office in the Unity building?

A. Yes, sir, you were in my office.

1248 Q. You want to correct that.

A. Yes, you were in my office, you were the first man in my office.

Q. I never was in your office.

A. Yes, sir, you were in my office, and so were you (indicating Mr. Carter).

Q. You mean Mr. Carter?

A. Yes, sir, Mr. Carter was there the second time, and Mr. Dillon was there the first time.

Q. You have got that wrong.

Mr. PALMER: Perhaps your lips won't be sealed when you get on the stand.

Mr. DILLON: I merely want to jog your memory.

A. No, there is no question about it, you came there the first time.

Q. I know your office is in the Unity building, but I never was in your office.

A. There is no doubt about it, Mr. Dillon, that you were in my office. You are the very first man I ever had a conversation with in regard to the matter of this company, and I know it was not Mr. Goetz, for he never was in my office.

Q. No, nor I.

A. And I have never seen him to recognize him until today.

Q. You have stated, Mr. Anderson, that you wrote letters to Mr. Palmer and the company regarding their change of plan from an assessment company to the new plan.

A. I never wrote a letter to Mr. Palmer in regard to that,

1249 but I wrote a letter to Mr. Putnam in regard to it, I think it was before Mr. Palmer became—I wrote him a pretty savage letter too.

Q. Protesting against the change?

A. Yes, sir, I did.

Mr. MITCHELL: I move that be stricken out.

Mr. DILLON: You also at one time told me, didn't you, that you believed that the company was up against it, that they would have to—that the court would compel them to do the square thing with the old policy holders, that they would have to play them their claim; didn't you say that?

A. No, sir, I told you this——

Q. Didn't you preface your remarks——

Mr. PALMER: Let him answer.

A. No, I told you this: I said that in my opinion an injunction would lie against the company preventing them from soliciting the old members whose support I relied on to help pay the death losses, from joining their new scheme.

Q. And didn't you say that you believed—didn't you state to me that you believed our bill would be successful, or something to that effect? Didn't you say that you had told them so? That is to say, that you had told the agents or some one who had called on you?

A. No, I never had any talk with any of the agents in regard to this matter; whatever communication I had in regard to this matter was direct with the company.

1250 Q. Didn't you state to me that you had told them, that is, the company, that the bill would be sustained, that is to say, the claims of these old policy holders would be successful in court?

A. No, sir.

Q. And that was the only reason that you came to see me?

A. No, sir, I had but one theory of this case, and that was that they had no right to openly, directly and affirmly solicit the old members by coercion or by threats or by freezing out, or any other such methods to take the new policies, but I told you this that there was no question but what the old members could voluntarily adopt the new scheme if they chose—voluntarily just the same as though they could drop this company altogether and go into a new one. That is what I told you, but I told you that they had no right to make threats and deprive me of the people I had a right to rely on to help pay death losses. I wrote the same to the company.

Q. You wrote them briefs showing them where——

A. Sir?

Q. You cited cases to the company showing them where they were not doing according to law.

A. No, sir, I did not in this particular, I submitted them briefs on another question. I wanted them to change my policy, I wanted them to change the beneficiaries, and they refused to do it,

1251 and I wrote another ugly letter to them, and I told them I hoped they would not——

Q. I merely asked you if you did.

A. No, sir, I did not, but I thought the reason why they refused to do this was because I was angry with them in regard to the other matter.

Q. Did you receive any letters from the company soliciting you to change from the old assessment plan to the new?

A. Oh, often.

Q. In any of those letters or communications from agents did they threaten that any of these actions would freeze you out and——

Mr. MITCHELL: That is objected to as not cross-examination and not the best evidence, the letter itself being the only competent evidence.

Mr. DILLON: Either by statements of the agents themselves or by these communications?

Mr. MITCHELL: I am perfectly willing that Mr. Anderson should produce any of those letters that he has.

The WITNESS: I have destroyed all those letters.

Mr. DILLON: You may state from your memory whether or not any of those letters contained any threats of freezing you out?

Objected to as not cross-examination.

Mr. PALMER: Whatever Mr. Anderson testifies to that I would like to ask him if he received any letters whether they purported to come from the officers of the company or some one
1252 else?

Mr. DILLON: That can be shown by redirect I think.

Mr. MITCHELL: It is further objected to as not being the best evidence.

The WITNESS: Whatever letters I received came directly from the home office I think. I do not think they came from the Chicago office; I think they came directly from the home office.

Mr. DILLON: Were there any statements there——

Mr. PALMER: Let him state the contents of the letters.

Mr. DILLON: Go ahead.

Mr. MITCHELL: The same objection.

The WITNESS: In substance it was this: That they had under the statutes of Minnesota adopted a new scheme of insurance, and that in course of time my premiums would be increased, as they did not intend and were not authorized to take any more of the old kind of insurance or the original kind of insurance.

Mr. DILLON: Did you say as a consequence of that change that on account of your assessment being so high or so exorbitant that you could not remain under that plan?

Same objection,

A. No, sir, nothing of that kind. They simply said that my premium would increase—my assessment would increase. Any ten year old boy would know that if they were not getting in young members of course the old members would have to bear
1253 the burden. I know that today, and still I am a member of the old scheme, and I propose to remain a member too.

Q. If you are the last one?

A. Yes, sir, I have told them that, that I would be one of the last three to pay.

Q. If you are one of the last—if you are one of the three last your assessment would be $333 per dollar?

A. Yes, sir; still it is a pretty good contract.

Re-direct examination.

By Mr. PALMER:

Q. The substance of these letters was to the effect that the securing of new contracts to keep the average age about the same, the difficulty of obtaining that kind of contracts was what led the company to make the change, wasn't it?

Objected to as incompetent, irrelevant and immaterial.

A. Yes, sir, I knew outside from what I had heard from the company and from other information, I knew that mutual companies were being discredited throughout the country.

Q. You knew that assessment companies and fraternal companies were all experiencing the difficulty of securing enough new members to keep down the average age?

A. Yes, sir, I knew it and know it today that it is an
1254 established fact.

Q. You are a member of a number of them yourself?

Objected to as not redirect examination and as leading.

A. Yes, sir.

Q. And it was stated in those letters that that was the reason for making the change, to get it down to a firm basis?

A. Yes, sir, that was very fully gone into in these letters which I got, numerous authorities were cited.

Same objection.

HERVEY H. ANDERSON.

Subscribed and sworn to before me this 14 day of May, A. D. 1902.

MARSHALL E. SAMPSELL,
Commissioner.

Adjourned until Thursday, May 1st, A. D. 1902, at 10 o'clock a. m.

1255 THURSDAY, *May 1st, A. D.* 1902.

Parties met pursuant to adjournment at 10 o'clock a. m.
Present: Same as before.

ESDRAS B. TRUBEY, called as a witness on behalf of the defendants, herein, being first duly sworn, was examined in chief by Mr. Mitchell and testified as follows:

Q. State your full name.
A. Esdras B. Trubey.
Q. Where do you reside?

Mr. DILLON: I believe the record of yesterday should show that John M. Burke was here present, as he was an attorney assisting, and I think the record should show that he was present.

Mr. MITCHELL: You can have that in if you want to. He took no part in the examination.

Q. (Question read.)
A. I reside at 6320 Eggleston avenue, Chicago, Illinois.
Q. What is your business address?
A. 1508 Masonic temple, Chicago, Illinois.
Q. You are one of the plaintiffs in this cause?
A. I am.

Q. At the time that you testified on behalf of the plaintiffs
1256 in this case some two weeks ago you spoke of having had an interview with Mr. Palmer, the president of this defendant company, in his office in St. Paul?

Objected to.
Mr. MITCHELL: I am just calling his attention to the interview.
Mr. DILLON: That is objected to.

Mr. MITCHELL: Can you fix the date of that conversation?

Objected to as incompetent, irrelevant and immaterial.

A. I cannot.
Q. Do you know what month it was in?

Objected to as incompetent, irrelevant and immaterial, and not admissible under the pleadings in the case.

A. I cannot remember definitely.
Q. Did you have more than one interview with Mr. Palmer last year?

Same objection.

A. I had.
Q. Did you have more than one interview with him in his office in the city of St. Paul?

Same objection.

1257 A. I had.
Q. State when, if you can, those interviews occurred.

Same objection.

A. The first interview was when the company had a meeting, the date of which I cannot recall.
Q. At the time of the annual meeting was it?

Same objection.

A. Well, I don't know whether it was the annual meeting or not.
Q. Was that during the year 1901?

Same objection.

A. It was.

Q. How many interviews did you have with Mr. Palmer altogether during that year?

Same objection.

A. Two.

Q. You say you do not recollect now when that second meeting occurred?

Same objection.

A. I don't recall the date.

Q. Nor the month?

Same objection.

A. Nor the month. I do know it was in the fall of the year.

Q. Of what year?

1258 Same objection.

A. 1901.

Q. At the time that you had that second interview with Mr. Palmer had you seen the bill of complaint in this cause?

Mr. DILLON: The same objection and as inadmissible under the pleadings and no foundation laid.

A. I do not know that I saw it all, but I saw or heard part of it read and knew that it had been drawn.

Mr. MITCHELL:

Q. Did you think that a suit was about to be instituted on that bill against the company at the time that you had this meeting with Mr. Palmer at this second interAiew?

Objected to as incompetent, irrelevant, impertinent and inadmissible under the pleadings in the case.

A. I did.

Mr. DILLON: I move that the answer be stricken out, because the question does not state specifically as to what interview.

Q. (Question read.)

A. I answered that, yes, sir.

Mr. MITCHELL: Do you remember how long you were in St. Paul or Minneapolis during that second time you had that second interview with Mr. Palmer?

Mr. DILLON: The same objection and also as not being specific.

A. Well, I do not, I was there though a number of days
1259 looking after certain property that I own in the north-west.

Q. Did you see Mr. John F. Byers at the time of that trip to Minnesota?

Same objection.

A. I did.

Q. Did you see or have any conversation with Mr. Byers at the time of that trip to Minnesota and prior to the time that you had this interview with Mr. Palmer, this second interview?

Same objection.

A. I did.

Q. Did Mr. Byers show you the bill of complaint at that time?

Same objection.

Q. The bill of complaint in this cause?

Same objection.

A. He told me he had it and he had it in his hands and I cannot say definitely that he read from it, but if not, at least he talked over its contents. I do not think at the time that I had it in my hand, but saw it in his hands.

Q. Where did this meeting between you and Mr. Byers take place?

Mr. DILLON: The same objection, and also as hearsay evidence.

A. In his office.

Mr. MITCHELL: In what city?

A. Minneapolis, Minnesota.

1260 Q. Do you remember how long before you called upon Mr. Palmer that this interview with Mr. Byers took place?

Same objection.

A. I do not, but probably a day or two.

Q. Did you know when you went to St. Paul that time that a bill of complaint had been drawn and a suit was about to be commenced against this company?

Same objection.

A. Yes, sir, I knew it that—I knew that it was contemplated for weeks if not months before.

Q. Do I understand you to mean that you knew for several weeks and months prior to this meeting that a suit was contemplated?

Same objection.

A. Well, I cannot say that it was definitely determined—I cannot say that I knew it was definitely determined that a suit would be brought, but I knew that it was agitated or being agitated by certain members here.

Q. When did you first authorize Messrs. Dillon & Goetz to make you a party to this suit?

Objected to as incompetent, immaterial, irrelevant and not admissible under the pleadings in the case, and not the best evidence, the record being the best evidence.

A. I cannot give you the exact date, but it was at the time
1261 when I learned through Dillon & Goetz that Mr. Iverson had withdrawn or had given unqualified notice of withdrawal.

Q. Hadn't you authorized Messrs. Dillon & Goetz to represent you in this case prior to that time?

Same objection.

A. I rather think I had, but not as a complaining witness.

Q. You mean by that not to be named as a party plaintiff in the suit, is that the idea?

Same objection.

A. Yes, sir.

Q. You had authorized them to represent your claim against the company prior to the time that Iverson withdrew, had you not?

Same objection.

A. Well, yes, in this way that I wanted to be represented as one dissenting from the action of the company in changing the name and methods of conducting its business and transferring its funds.

Q. When did you first authorize Messrs. Dillon & Goetz to represent you in this case in that way?

Objected to as immaterial, irrelevant and incompetent.

A. I cannot recall the date.

Q. Was it prior to the time that the suit was actually commenced?

1262 Same objection.

A. No, sir, and not for quite a while afterwards.

Q. Did you ever sign one of these printed forms of power of attorney to Messrs. Dillon & Goetz?

Same objection.

A. I verily *I* believe I did, but the date of it I cannot give.

Mr. MITCHELL: Mr. Dillon, have you that power of attorney with you?

Mr. DILLON: I do not know of any such power of attorney that he refers to, if I have one it is a privileged matter.

Mr. MITCHELL: You refuse to produce it, do you?

Mr. DILLON: I will state that I haven't any, but if I have I shall refuse now to produce it.

Mr. MITCHELL: What did you do with that power of attorney that you signed, Mr. Trubey?

Same objection.

A. If I signed one I gave it to the attorneys.

Q. You just said you signed one, didn't you?

A. I said I verily believed and now I qualify it with the statement that if I did I gave it to the attorneys.

Q. Did you go and see Iverson in Milwaukee after you learned that he was going to withdraw from this case?

Mr. DILLON: I make the same objection, as irrelevant, immaterial, incompetent and not admissible under the pleadings.

1263 A. I did.

Mr. MITCHELL: State whether or not you tried to persuade him to remain a party plaintiff at that time?

Same objection.

A. I did.

Q. Do you know Mr. Edmund D. Carter?

Objected to as incompetent, irrelevant and immaterial and not bearing on the case.

A. I do.

Q. How long have you known him?

Same objection.

A. Something less than a year I should say.

Q. Has your office been in 1508 Masonic temple during all this time, this year?

Mr. DILLON: I make the same objection, and also as being inadmissible under the pleadings and as being impertinent.

A. Yes, sir, I had an office on that floor of that building since the building was built.

Mr. MITCHELL: How long have Messrs. Dillon & Goetz had an office at No. 1510 Masonic temple?

A. I don't know.

Q. Can you state whether it was a month or a year or three months?

Same objection.

A. Oh, it was a year or more, but I——

1264 Q. That is definite enough. Have you had conversations with Mr. Carter about this case from time to time during the last two months?

A. I had several talks with Mr. Carter relative to this case.

Q. Did any of those conversations take place prior to the commencement of this suit?

Same objection.

A. Yes, sir.

Q. Did Mr. Carter make any statement to you at these conversations as to what he believed to be the condition of the company, and the methods of its management, and so forth?

Mr. DILLON: I object to its being immaterial, incompetent, irrelevant, impertinent and not admissible under the pleadings and issues in this case, and also as hearsay evidence.

A. He did.

Mr. MITCHELL: Did you see Mr. Carter frequently during the last *few months over* in the Masonic Temple building?

Same objection.

A. No, I haven't seen him for the last two months at all to my present recollection.

Q. During the fall of 1901 did you see Mr. Carter frequently in the Masonic Temple building?

Same objection.

A. Yes, sir.

1265 Q. Where did you see him?

Same objection.

Q. In what part of the building?

Same objection.

A. Usually he would come into my office, sometimes I would see him in Messrs. Dillon & Goetz' office.

Q. What was Mr. Carter doing in that office?

Same objection.

Q. Did he appear to have any occupation there?

A. I don't know what Mr. Carter's business is or was, neither do I know the business of many other men.

Q. Did you see him frequently in the office of Dillon & Goetz?

Same objection.

A. Not very often, because I was not there very often for one reason, and he was not always there when I was there.

Q. Did you ever see Mr. Carter engaged in writing at or using a desk in the office of Dillon & Goetz?

Same objection.

A. I did.

Q. Have you heard Mr. Carter talking to Messrs. Dillon & Goetz in the office of Dillon & Goetz in regard to this lawsuit?

Mr. DILLON: I make the same objection, and also as being hearsay.

1266 A. Not that I recall.

Mr. MITCHELL: You stated on your former examination as follows: "Q. Well, you just admitted, Mr. Trubey, that Mr. Carter's business in Dillon & Goetz' office has been in connection with this

law suit?" "A. Yes, sir, so far as I know, that is partially so; he pretends to work old line insurance, and I heard him talk—, what I mean by interested is I have heard him talk to Dillon & Goetz about it." Does that answer refresh your memory any as to the fact?

Objected to as immaterial, incompetent, irrelevant and inadmissible under the pleadings and issues, and also that there is nothing to show that that was asked on the examination on behalf of the complainants.

A. Well, I do not recall any particular conversation that he had at any time with Dillon & Goetz at any time when I was in there; I knew he was connected with Dillon & Goetz, and when I would be in the office there it is impossible for me to recall now just what was talked, what was said, and it is possible that at different times when I was in there the case before us would be talked about, and quite naturally Mr. Carter would do his share of the talking.

Q. Well, it is a fact then, is it, that while you cannot remember the substance of the conversation you know that Mr. Carter
1267 and Messrs. Dillon & Goetz did converse together about this suit in your presence in that office?

Same objection.

A. I do not recall that Mr. Carter went into details at all. I talked on the subject in their office, although I would not say that he did not.

Q. Did he in your presence ever talk to Dillon & Goetz about this suit anywhere else than in their office?

Mr. DILLON: I make the same objection, and also as hearsay evidence.

A. Yes, sir, he did in my office.

Mr. MITCHELL: Who was present at that interview?

Same objection.

A. There were none others present save them.

Q. You mean by "them" Messrs. Dillon & Goetz and Carter?

A. Yes, sir.

Q. Had you more than one conversation together in your office in regard to this case?

Same objection.

A. Yes sir.

Q. Were those conversations frequent?

Same objection.

A. Oh, there were a number, I could not state the exact number though.

Q. When did the first one take place that you recollect
1268 substantially; I don't want the exact date, but substantially?

Same objection.

A. Well, the first was before the suit was brought.
Q. How long before?

Same objection.

A. Well, several weeks, perhaps a month and perhaps two months.
Q. Did you have more than one conversation in that way?

Same objection.

Q. Prior to the commencement of the suit?
A. Yes, sir, but I would not have it understood that they were all three present in my office at one time.
Q. Well, state the circumstances, then, and who was present?

Same objection.

Q. That is, whether Dillon or Goetz or Mr. Carter was present, and, if so, which ones?
A. Oh, I could not tell you; perhaps one would come in and tell me about what they were going to do, and so forth, and then maybe in a day or two in would come another and tell me what such and such a member had said, and so forth, at all of which times I declined to take any part in it whatever, although I said this, if the company was rotten I would be glad to find it out, although I would only believe it when it would be proven to me to be so.

Mr. DILLON: I move the answer be stricken out as being not responsive.

1269 Q. Did they ask you to become a party?
A. How is that?
Q. Did either Mr. Carter, Mr. Dillon or Mr. Goetz ask you to become a party?

Mr. DILLON: I make the same objection, and also as a privileged communication.

A. My impression is, as I verily believe, they did.
Q. Had Dillon & Goetz acted as your attorneys prior to the commencement of this suit in any other matters?

Same objection.

A. No, sir.
Q. You say you refused to become a party until Iverson withdrew?

Same objection.

A. Yes, sir.

Q. You stated at the time of your former examination that you consented to become a party after Iverson withdrew in order to prevent the action going by default?

Same objection.

A. Yes, sir.
Q. Is that the only reason you became a party?

Same objection.

A. Yes, sir.

Mr. DILLON: I also desire to have the answer to the last question stricken out as not being the best evidence, the best evidence being the bill or intervening petition which is signed by the witness.

1270 Mr. MITCHELL: Mr. Trubey, you stated you had two interviews with Mr. Palmer during 1901, the first one at the time of some meeting of the company.

Mr. DILLON: I would like to state here for the benefit of the issues in the case that the witness is not obliged to answer according to the ruling of Judge Kohlsaat yesterday, as all these questions that have been put this morning are on the same line as passed on by Judge Kohlsaat yesterday as being impertinent, immaterial and no reason for them under the issues, and I want the record to show he is not compelled to answer the question.

Mr. WITCHELL: If statements of counsel are to be admitted as evidence in this case I would like to state that Judge Kohlsaat never passed on these questions or their materiality in any way, shape or manner, or on anything in connection with Mr. Trubey.

Q. (Question read.) State the circumstances of that first interview?

Mr. DILOON: That is objected to for the reasons generally given here, and as having been gone over once.

Mr. MITCHELL: And where did it take place?
A. It was in the company's office in St. Paul.
Q. What was the date of that?

Same objection.

A. I don't remember.
1271 Q. What meeting was taking place that you referred to?

Same objection.

A. I don't know whether it was an annual or a special meeting of the company, but at any rate a notice was sent and I attended the meeting.

Q. Did you have any personal conversation with Mr. Palmer at that time?

Same objection.

A. Why, I talked with him personally, yes, sir, not through a proxy, but there was nothing of importance said, nothing special whatever.

Q. Was that a meeting of the members of the company, or a meeting of the directors and trustees?

Same objection.

A. A meeting of the members.

Q. Did you say that both of these meetings were during the year 1901, these interviews with Mr. Palmer?

Same objection.

A. I did.

Q. The first one was at a meeting of the members of the company during that year, was it?

Same objection.

A. As I remember it and so understood at that time it was a meeting of the members.

Q. Did you go there for the purpose of taking part in the 1272 meeting as a member?

Same objection.

A. I did not.

Q. You were a member at that time, were you not?

Same objection.

A. I was,—well, I will——

Q. Who presided at that meeting?

Same objection.

A. I wish to qualify my answer as to that: I went to St. Paul to attend the meeting, but I did not go from here to Minnesota to attend the meeting. I ordinarily go to Minneapolis on personal business about once a month.

Q. Do you remember who presided at that meeting, Mr. Trubey?

Mr. DILLON: The same objection, and as not being the best evidence; it is all immaterial, and there is no reason here to burden the record with such stuff.

A. While I was in attendance at the meeting Mr. Palmer presided.

Mr. MITCHELL: Did you ever reside in Minnesota, Mr. Trubey?

Same objection.

A. I decline to answer that question unless so instructed by the court, as it is foreign to this case.

Q. Were you ever engaged in business in Minnesota?

Same objection.

A. I decline to answer for the same reason.

1273 Q. Where did you reside at the time you became a member of the defendant company?

Same objection.

A. I decline to answer for the same reason.

Mr. MITCHELL: You may cross-examine, Mr. Dillon.

Mr. DILLON: I wish to make a motion here that all this testimony given here this morning and all other irrelevant, immaterial and impertinent matter be stricken from this testimony at the expense of the defendants producing the testimony.

Cross-examination.

By Mr. DILLON:

Q. Mr. Trubey, you have stated that you interviewed Mr. J. E. Iverson of Milwaukee, in regard to this case; was there any one present talking to Mr. Iverson at the time you called on him in reference to this case?

A. There was.

Q. Is there any one in this room, and, if so, you may identify him and give me his name as you now know it.

Mr. MITCHELL: That is objected to as not proper cross-examination, and as incompetent, irrelevant and immaterial.

A. Yes, sir. I identify the man standing over there as the individual who was talking to Mr. Iverson as I went in his place of business.

Mr. DILLON: You identify him as being what man?

1274 Mr. MITCHELL: Mr. John F. Burke.

Mr. DILLON: You admit that the man he pointed out is Mr. John F. Burke?

Mr. MITCHELL: Yes.

Mr. DILLON: Of Milwaukee?

Mr. MITCHELL: Of Milwaukee.

Mr. DILLON: Did the gentleman, John F. Burke, say anything to induce Iverson to withdraw from this case?

Objected to as incompetent, irrelevant, immaterial, not proper cross-examination and as hearsay.

Q. Was there anything said of that kind in your hearing on the day you have mentioned?

Mr. MITCHELL: Let me ask one preliminary question: Did you take part in this conversation—any conversation between Mr. Burke and Mr. Iverson?

Objected to as redirect examination.

A. I did not.

Mr. MITCHELL: The objection is renewed.

Mr. DILLON: What was said there, if anything, in that regard, if anything, by John F. Burke?

Mr. PALMER: That is objected to on the same ground, and as referring to the existence of a fact concerning which there is no evidence or proof.

1275 A. As to — that gentleman, so called Burke, said, I could not understand. If I remember right I could only understand one statement or request made by him, and that is that he should attend to it, whatever the question was before that.

Mr. DILLON:

Q. Referring to what?

A. Referring to the case which I knew they were talking about from what Mr. Iverson said, but not from what Mr. Burke said, as he talked so low that I did not understand him. Several times——

Q. Except the sentence that you refer to?

Same objection.

A. Yes, sir, but as to any particulars that Mr. Burke stated to Mr. Iverson I could not understand.

Q. Now state the circumstances and also what you heard Mr. Iverson say to Mr. Burke?

Objected to as incompetent, irrelevant, immaterial, not proper cross-examination and as hearsay.

Q. Where it was and the circumstances.

Same objection.

A. If the attorneys will allow me to make a statement without interruption I think it will be more satisfactory to both sides, of just the occasion and all that occurred.

Mr. MITCHELL: I think we will object to your making any statement except in response to statements submitted by counsel.

A. Will you please read the question, Mr. Reporter.

1276 Mr. DILLON: I will repeat the question: The question is to state the circumstances, what you heard there and what was said by Mr. Iverson to this man Burke relative to the case.

Mr. MITCHELL: That is objected to as not proper cross-examination, as incompetent, irrelevant immaterial and as hearsay evidence.

A. I went to Mr. Iverson's place of business in Milwaukee subsequent to his giving notice of withdrawal from the case, and when I arrived at his place of business I found him seated at his desk with this gentleman Burke—pardon me, I will change that: with this gentleman whom I recognize as named Burke standing by his desk talking to him. I did not interrupt them, but stepped back 10, 12 or 15 feet from them and leaned against the counter, waiting for an opportunity to speak to Mr. Iverson. Very shortly I overheard their conversation alluding to the Bankers Life, and, as before stated, I could not understand what Mr. Burke said, because he talked too low, but I could quite easily understand what Mr. Iverson said, and among the various expressions that he made one was that he could rely upon it that he would do just as he agreed, and he would have his name off of that bond in spite of the devil. He further stated that if he had known what he knew now—if he had it to do over again he would not have made it so hard for them,
and that he would write to a party in St. Paul that evening
1277 or the first thing next morning and have it attended to.

ESDRAS B. TRUBEY.

Subscribed and sworn to before me this 9th day of May, A. D. 1902.

MARSHALL E. SAMPSELL.
Commissioner.

1278 EDWARD P. KENYON, called as a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Mitchell and testified as follows:

Q. What is your name?
A. Edward P. Kenyon.
Q. Where do you reside?
A. Chicago, Illinois.
Q. What is your occupation?
A. Life and accident insurance inspector and adjuster.
Q. What has your occupation been for the last three or four years?
A. The same.
Q. Are you acquainted with Mr. Edmund D. Carter?

Mr. DILLON: That is objected to as irrelevant, immaterial, incompetent and inadmissible under the pleadings in the case.

A. I am.
Mr. MITCHELL: State when you first became acquainted with Mr. Carter.

Same objection.

A. On or about the 1st of May, 1899.

Q. State the occasion of your becoming acquainted with Mr. Carter.

Same objection.

Q. The circumstances?

Same objection.

1279 A. I was in Milwaukee at the time, and circumstances brought me on the south side of the city and into the drug store of one J. W. Tonkiewicz, and there circumstances arose which occasioned me being introduced to a man that I now know as Mr. Carter, by Mr. Tonkiewicz.

Q. State whether or not you went to Milwaukee for the purpose of meeting Mr. Carter and the circumstances under which you went there?

Objected to as incompetent, irrelevant, immaterial, impertinent and inadmissible under the pleadings, as leading and as having no bearing on the case.

A. I was at that time and am now in the employ of the Thiel Detective Service Company, and was directed by the manager of the Chicago office to proceed to Milwaukee and there meet representatives of the Bankers Life of St. Paul—the Bankers Life Association, I think it is called, and act under their instructions in connection with work at that point.

Q. Were you instructed at that time to become acquainted with Mr. Carter?

Same objection.

A. I was.

Q. For what purpose?

Same objection.

A. For the purpose of ascertaining what his connection was with a certain action which was being brought by other parties—

1280 I won't say by other parties—which was being brought before various courts.

Q. Against whom?

Same objection.

A. Against the officers of the Bankers Life Association of St. Paul.

Q. Now proceed and state when and where you first became acquainted with Mr. Carter?

Same objection.

A. Well, as I stated before, at the drug store of Mr. Tonkiewicz. Mr. Carter at that time was introduced to me under another name.

Mr. DILLON: I make the same objection, and as not being responsive, and I move to strike it out as not being responsive.

The WITNESS: But a little later when it was explained by Mr. Tonkiewicz that Mr. Carter was interested in life insurance work and at that time was engaged or connected with the prosecution of a large life insurance institution, Mr. Carter then gave his correct name; I won't say whether he gave it or Mr. Tonkiewicz gave it.

Mr. MITCHELL: Was that statement in regard to Mr. Carter's occupation made in Mr. Carter's presence?

Same objection.

A. Yes, sir.

1281 Q. Did you see very much of Mr. Carter after that, and, if so, how long?

Mr. DILLON: I make the same objection, and also as leading and too general.

Question withdrawn.

Mr. MITCHELL: Did you see very much of Mr. Carter personally after that time?

Same objection.

A. I did.

Q. Where generally?

Same objection.

A. Well, as a rule I would first meet him at my hotel.

Q. I mean at what city?

Same objection.

A. The city of Milwaukee, Minneapolis and Chicago.

Objected to.

Q. Were your interviews or meetings with Mr. Carter of frequent occurrence?

Same objection.

A. They were.

Q. State generally how frequent.

A. They were almost daily.

Q. How long did that connection or acquaintance with Carter keep up in that way?

Same objection.

1282 A. Up to on or about the 25th day of August, 1899.

Q. Did you give the date on which you first became acquainted with Mr. Carter, the year?

Same objection.

A. On or about May 1st, 1899.

Q. Did you keep any notes or memorandum of your transactions and conversations with Mr. Carter during that period from May 1st to August 25th, 1899?

Same objection.

A. I did.

Q. What was the nature of those memorandum that you made?

Same objection.

A. They were in the nature of daily reports to the Thiel detective service of Chicago.

Objected to.

Q. Were those memoranda or report of your conversations and transactions with Mr. Carter made from time to time immediately after the conversations and transactions occurred?

Objected to as immaterial, irrelevant, incompetent, impertinent, inadmissible under the pleadings, as leading and not the best evidence.

A. They were.

Q. What was your practice in regard to making those memorandums or reports as to the time of making them?

Same objection.

1283 A. They were made as soon after the conversation and incidents that transpired as convenient, usually on the same day.

Q. Do those memoranda or reports that you made during that time and during that period contain a correct statements of the transactions and conversations between you and Mr. Carter?

Same objection.

A. They do.

Q. Were those memorandums or reports made by you in writing, or orally?

Mr. DILLON: I wish to object to these questions as being irrelevant, immaterial, incompetent, impertinent, inadmissible under the pleadings, not the best evidence, as being hearsay, as being leading and also as being *ex parte* evidence, neither party referred to having any connection with the case.

Q. (Question read.)

A. Made in writing.

Mr. MITCHELL:

Q. Have you those reports before you?

Same objection.

A. I have.

Mr. MITCHELL: I will ask the witness in answering the questions hereafter to use those memorandums if necessary in refreshing his recollection, only when necessary, and only when by refreshing his memory from these memorandums the witness will have an independent recollection of the fact.

Mr. DILLON: That is objected to on the usual grounds.

1284 Mr. MITCHELL: Mr. Kenyon, what particular proceedings did you refer to as taking place in court at the time you first became acquainted with Mr. Carter, civil or criminal?

Mr. DILLON: The same objection as last above given.

A. Are you ready for the answer?

Mr. MITCHELL: Yes.

A. It was at the time of the indictment of certain officers of the Bankers Life Association of St. Paul by the Federal grand jury at Milwaukee.

Q. Calling your attention to the date of May 2nd, 1899, did you have any conversation with Mr. Carter on that day?

Same objection.

A. I did.

Q. State where that conversation occurred?

Mr. DILLON: Same objection and also as not being the best evidence, and I also object to the witness refreshing his memory for such a purpose in such a way.

A. I will have to refresh my memory a little. (Witness refers to paper.) I think that conversation started at the Windsor hotel at Milwaukee and continued while walking to the saloon known as the Wayside inn.

Mr. MITCHELL: Were there any other persons present at that conversation?

Same objection.

A. Yes, sir.

Q. What was the name of any person present?

1285 Mr. DILLON: I make the same objection and also as being *ex parte* evidence and immaterial.

A. A man by the name of J. J. Brown was present.

Mr. MITCHELL: State what that conversation was with Mr. Carter.

Mr. DILLON: I make the same objection, and as hearsay and the question is leading, incompetent, irrelevant, immaterial and impertinent.

A. The conversation in general had been on the subject of the case that was in the United States court at that time in reference to the indictment of the officers of the Bankers Life Association of St. Paul, and the question was asked Mr. Carter what he was going to get for busting up the Bankers Life.

Mr. PALMER: Asked by whom?

Same objection.

A. I think it was asked by Mr. Brown.

Q. In your presence?

Same objection.

A. In my presence or by me in Mr. Brown's presence, I won't be sure which.

Mr. MITCHELL: What answer did Mr. Carter make?

Same objection.

A. Mr. Carter replied: "A good big piece of money."

1286 Mr. DILLON: The same objection and I move that the answer be stricken out as *ex parte* evidence, irrelevant and immaterial and as hearsay evidence.

A. Do you want the balance of the conversation?

Mr. MITCHELL: Yes, state the substance of it.

Mr. DILLON: I shall object to these questions for the reasons given.

A. Either Mr. Brown or myself asked Mr. Carter, "Are you sure of getting it?" He replied—I will say Mr. Carter replied, "Yes, I have a lead pipe cinch on it."

Mr. DILLON: I object to the gentleman reading the reports, the reports themselves being the best evidence, and I wish it noted that the memorandum or report is being used.

A. "U. S. District Attorney"—this is continuing the statement of Mr. Carter——

Same objection.

The WITNESS: "U. S. District Attorney Phillips is in the deal and I look to him for my money."

Mr. DILLON: I move that be stricken out as being hearsay, not the best evidence, impertinent, irrelevant and incompetent under the pleadings.

Mr. MITCHELL: State any conversation at that point, if any.

Same objection.

1287 A. Mr. Brown or myself then suggested to Mr. Carter that he make sure that he was going to get his share of the divy before the case was settled. Mr. Carter replied that Phillips

was on the square with him, and he felt no uneasiness about getting his share of the money, and he also said that the Bankers Life Association had claims for $600,000 for deaths outstanding against it that they could not meet.

Mr. DILLON: I object to the witness reading his testimony, as not being the best evidence, and move that his answers be stricken out for that reason.

Mr. MITCHELL: State what further was said.

A. And that they could not—and that they were insolvent and it would only be a few days before they would be in the hands of a receiver.

Same objection.

Mr. DILLON: I want it to appear that this gentleman is referring to the purported reports to the detective agency, is that right?

A. What is that?

Q. Are those the reports to the detective agency that you are reading from?

A. Yes, sir.

Mr. DILLON: I wanted to show that the gentleman has them before him on the table and is reading from them.

Mr. PALMER: Are you reading from those reports or refreshing your recollection from them?

A. I am refreshing my recollection from them as the instances occurred. The instances in this case occurred during a long
1288 period of time, and I cannot remember every incident in its minutest detail during that long period of time without refreshing my memory.

Mr. DILLON: I object to the report and ask that it be excluded.

Mr. MITCHELL: By refreshing your recollection from these memoranda as you are doing it now, state whether or not you have an independent recollection of the conversations as you relate them?

Mr. DILLON: That is objected to; it makes no difference, they are immaterial, these written reports are the best evidence.

A. I have a very independent recollection of the incident in general, but as they occurred consecutively I could not place them without some memorandum to refresh my memory.

Mr. PALMER: Having refreshed your memory from them do you then have an independent recollection from it?

Same objection.

A. I do.

Mr. PALMER: Now, in refreshing your recollection from this memoranda, Mr. Kenyon, you have not used them except whereby after referring to them you do have an independeut recollection;

if there are any matters which by referring to them does not refresh your recollection those matters must be omitted from your testimony.

Mr. MITCHELL: Do you understand that?

A. I understand that perfectly.

1289 Mr. DILLON: You did read some of your answers from those reports.

A. No, sir.

Mr. MITCHELL: This is not cross-examination; we are examining this witness, and if you care to cross-examine him when we get through with him you are at liberty to do so.

Mr. DILLON: I want the record to show that he has read certain of those answers from this purported report to his agency.

Mr. MITCHELL: Ask him when we get through.

Mr. DILLON: It must show at the time of the——

Mr. MITCHELL: We object to any statement of counsel as to the facts.

Mr. DILLON: The record must show what takes place.

Mr. MITCHELL: Referring to this meeting with Mr. Carter in Tonkiewicz' drug store that you spoke of, did any conversation take place there in regard to the Bankers Life Association of St. Paul between you and Mr. Carter?

Mr. DILLON: I object to that as incompetent, irrelevant, immaterial, impertinent and not the best evidence, and not admissible under the pleadings, and I would like to have it show that the attorney in asking his questions refers to those purported reports.

A. There was.

Mr. MITCHELL: State what that conversation was.

Same objection.

1290 A. Mr. Carter first commenced by stating that he had been instrumental in securing the indictment of certain officers of the Bankers Life Association of St. Paul, that they had been doing business—or using the United States mail for fraudulent purposes, that they were an insolvent institution, that if they paid all their outstanding liabilities they would not have a dollar left; they had over $600,000 worth of claims against them for death losses.

Q. Did Mr. Carter say anything about his connection with the proceedings against the company then pending in the United States district court?

Same objection.

A. He stated that he had assisted the United States district attorney Phillips in preparing the case, that he had written a pamphlet in connection with the affairs of the Bankers Life Association, which had been used to a considerable extent in the preparation of the indictment.

Q. Did he hand you one of these pamphlets—did he exhibit one to you?

Same objection.

A. I don't know whether it was at that time or later he gave me one. I had several of them at various times.

Q. Were all those that you procured obtained from Mr. Carter?

Same objection.

A. They were.

1291 Q. I will call your attention to Defendants' Exhibit 10 which purports to be a printed circular "*In re* the Bankers Life Association of St. Paul, Minnesota, copyrighted in 1896 by E. D. Carter," signed "E. D. Carter," and ask you whether or not that is one of the circulars or pamphlets obtained by you from Mr. Carter?

Same objection.

A. I cannot say whether it is the one that I secured from Mr. Carter, but it is very similar.

Q. What did you do with the pamphlets that you obtained from Mr. Carter?

Same objection.

A. One of them accompanied my first report in the case.

Q. What disposition did you make of the balance?

Same objection.

A. Why, I think I have some of them at this time, I don't know whether I have or not, among my papers. I may have given others to various representatives of the Bankers Life.

Q. Did Mr. Carter state what he proposed to do, if anything, in regard to the Bankers Life Association?

Mr. DILLON: I make the same objection, and also that the attorney refers to typewritten reports which speak for themselves.

A. Mr. Carter said that he proposed to bring about the dis-
1292 semination of the Bankers Life Association, or if they wanted to make a settlement with him at any time, his discontinuing his work and pursuing them in the manner he was, he would consider it.

Mr. MITCHELL: Referring to the date of May 25th, 1899, did you have a conversation with Mr. Carter on that date?

Same objection.

Mr. DILLON: I would like to have it noted that the attorney is leading the witness by showing him the printed reports which are right in front of the witness and being referred to and pointed to by the attorney.

Mr. MITCHELL: We object to any statement made by any attorney in this case, any statement of facts to be inserted in the record.

A. Are you ready for the answer?
Q. Yes.

Same objection.

A. On the 25th of May in the afternoon Mr. Carter and I had a conversation, this was after the indictment that was found by the Federal grand jury had been quashed, in which Mr. Carter stated he had been in Mr. Bloodgood's office, and that one of the Bloodgoods, one of the firm had had a conversation with United States District Attorney Phillips in reference to having a new indictment found against the officers of the Bankers Life Association of St. Paul. I think it was at that time that Mr. Carter first made
1293 mention of the fact that he might consider favorably a proposition looking to the Bankers Life paying him a money consideration to stop these proceedings; he was the principal instigator in them, and without him any proceedings would fall flat; he had all the data in the case and information and would be willing to turn it over to the officers of the Bankers Life Association, turn all evidences that he had in his possession to assist the United States district attorney Phillips in the preparation of the indictment, for a consideration of fifty thousand dollars.

Mr. DILLON: I move to strike that answer out as not being responsive, and as immaterial, irrelevant, incompetent and impertinent.

Mr. MITCHELL: Have you an independent recollection of these conversations with Mr. Carter that you have just been testifying to, without refreshing your recollection from your notes?

Objected to as not proper direct examination.

A. I have an independent recollection of the conversation held with Mr. Carter at this time and various other times, as to the exact dates, hours possibly when they transpired, I would have to refresh my recollection. A great many of them covered a period of three or four months.

Q. Have you referred to your memorandum or reports so far for any purpose other that to refresh your recollection as to the
1294 dates?

Mr. DILLON: That is objected to as leading and not the best evidence, the record of the proceedings here shows that they are printed reports which are before him, containing slips of paper in the reports from where he wants to testify, and also marginal pencil marks showing what parts is desired to be put in evidence.

Q. (Question read.)
A. That is all.

Mr. DILLON: I would like the examiner to note that these reports are marked with pencil marks, and also that these papers are in there, so it goes in the record. I think the examiner should see that himself.

(The commissioner examines papers.)

Mr. DILLON: I merely want it to go on record that the witness is testifying from typewritten reports which have been prepared by the attorney, and which have pencil marks on the margin.

Mr. MITCHELL: We have no objection to the statement on the record that there are such reports on the table, but the witness has testified that he has not used them except as to the dates.

Mr. DILLON: I want it to be shown that he does look at those while he is testifying.

Mr. PALMER: We would request the commissioner to re-
1295 main here for a few minutes. We will state that these reports are inserted on different slips of paper, together with a marginal line opposite various parts of the reports, and which are put there for the guidance of counsel in examining this witness to separate the material parts from a mass of immaterial matter, and the witness is giving his evidence, and the counsel and the reporter know that he is not referring to them to refresh his memory except as to the dates.

Mr. DILLON: And also to the gentleman testifying to the contents of the reports as not the best evidence, the reports themselves being the best evidence.

Mr. MITCHELL: Calling your attention to the date of June 4th, 1899, did you have any conversation with Mr. Carter on that day?

Objected to as incompetent, irrelevant, immaterial, impertinent, not the best evidence, and as *ex parte* evidence and hearsay.

A. I did.

Q. State what that conversation was.

Same objection.

A. As near as I can remember, and which I think was pretty near correct, it was about that time that Mr. Carter first broached the subject of his having a contract with certain attorneys in Mil-
waukee which he was interested with in having these
1296 actions brought against the Bankers Life Association, to show what he was going to get out of the proceedings, there was certainly some compensation going to accrue to some one, and he wanted to know where his share of it was coming in, and he didn't believe that the attorneys he was connected with were acting on the square; there were possibilities of their throwing him down, and he purposed to have some sort of a contract to show what he was going to have.

Q. Do you recollect any other conversation at that time?

Same objection.

A. I think at that time it was mentioned in reference to an attorney at Minneapolis who was interested with it—with him, and whom he told me seemed to be quite anxious to have these suits—have these actions vigorously prosecuted, while these attorneys in Milwaukee seemed to be a little dilatory, and not pushing the proceedings as he would like to have them. Therefore he would like to go to Minneapolis and see the attorney there, and see if he could not hasten matters up a little. I think he had had some talk at that time with his Milwaukee attorneys, or with the Milwaukee attorneys in which this question of contract had been discussed, and that they were putting him off on the grounds that they were unable to hear from the attorney at Minneapolis who was interested in the case. Prior to that there had been a meeting, so Mr. Carter told me, in his attorney's office in Milwaukee in which the Minneapolis attorney was present and very much interested in his statement of the
1297 case and seemed to be anxious to proceed.

Mr. DILLON: I move that all that be stricken out for the reasons above given.

Mr. MITCHELL: Have you before you your written memorandum or notes made of conversations with Mr. Carter on June 4th, 1899?

Same objection.

A. I have.
Q. Is this memorandum in your handwriting?

Same objection.

A. It is.
Q. When was it made?

Mr. DILLON: I make the same objection and as not being the best evidence.

A. It was made on the day of its date.
Mr. MITCHELL: I will ask you to refresh your recollection from this written memorandum in your handwriting, and then state, after having so refreshed your recollection, whether you have any independent recollection of any further conversation at that time?

Mr. DILLON: I make the same objection, and it does not appear to the examiner what the nature of these memorandums are. If there are letters they speak for themselves, and they are the best evidence.

Mr. MITCHELL: This memorandum that you are about to
1298 refresh your recollection from, is it one of the reports or memorandums of your transactions with Mr. Carter that you have referred to before?

Same objection.

A. It is. It was——

Mr. DILLON: Let it appear that the witness is looking at a letter.
Mr. MITCHELL: It is not a letter.
Mr. DILLON: What is it? Let me see it.
(Counsel handed paper.)

Mr. DILLON: It is a report of yours to the detective agency?
A. Yes, sir.
Q. Sent in by you?
A. Yes, sir, by me in my handwriting.
Q. On that day?
A. Yes, sir.
Q. Sent in a letter, wasn't it—sent in an envelope.
A. Sent to the agency.

Mr. DILLON: I think it speaks for itself.

Mr. MITCHELL: Have you refreshed your recollection now from this memorandum in your handwriting, under date of June 4th, 1899?

Mr. DILLON: I object to that for the usual reasons, and also that it is not shown here that it is a memorandum.

A. Yes, sir.

Mr. MITCHELL: State if you remember now what further
1298½ conversation took place between you and Mr. Carter under date of June 4th, 1899?

Mr. DILLON: I make the same objection, and also as not being the best evidence.

Q. (Question read.)
A. Mr. Carter in speaking of this trip to St. Paul said that he desired particularly to take it so as to see if he would not be approached by some one from the Bankers Life Association for a settlement that he might get some money out of this transaction and stop his agitation against them.

Mr. MITCHELL: Referring to the date of June 5th, 1899, have you before you the written report or memorandum—any written report or memorandum made by you of your conversations or transactions with Mr. Edmund D. Carter on that day.

Mr. DILLON: That is objected to, and I would like to have it shown just what has taken place in regard to this.

Mr. MITCHELL: Make your statement on the record.

Mr. DILLON: That is objected to as irrelevant, incompetent, immaterial, not admissible under the pleadings, and if there is a daily report by the witness of these transactions, that report is better evidence than his memory, and also that it is *ex parte* evidence.

Mr. MITCHELL: You may answer the question.
A. I have.
Q. In whose handwriting is that memorandum or report?

1299 Same objection.

A. It is in mine.

Q. State whether it is one of these memoranda or reports which you have already referred to?

Mr. DILLON: I make the same objection and I want the record to show that they are letters that he is referring to.

A. It is.

Mr. MITCHELL: I will ask you to refresh your recollection from this memorandum of yours under date of June 5th, 1899?

Mr. DILLON: That is objected to on the ground that the report itself is the best evidence as to what it may contain, and also that it is incompetent, immaterial, irrelevant, impertinent, not admissible under the issues, and *ex parte* evidence.

A. (Witness refers to paper.)

Mr. MITCHELL: Do you recall, Mr. Kenyon, of having had any conversation with Mr. Carter June 5th, 1899?

Same objection.

A. I do.

Q. State what that conversation was.

Same objection.

A. Well, it started out by Mr. Carter's giving me an idea of what he had been doing in the morning in Mr. Bloodgood's office in reference to matters that they had discussed, that they were pretty busy at this time, too busy to take up the matter of
1300 this case; the conversation then turned to the matter of Mr. Bodden being interested in some of the former prosecutions that had been brought against the Bankers Life. I inquired of Mr. Carter if Mr. Bodden was to get anything out of the results in a pecuniary way, and he stated that he was not. Mr. Bodden had advanced money to pay the expenses of the prosecution, and if there was anything gotten out of it he was to be reimbursed; he was to have no part of any of the funds received, and he was to lend all moral support possible to the prosecution of the cases that might come up wherein he was used or his name used at all events.

Q. When you say that he was to have no part of the proceeds of these proceedings other than the reimbursement, to whom do you refer?

Same objection.

A. Mr. Bodden.

Recess to 2 o'clock p. m.

1301 Parties re-assembled at 2 o'clock p. m.
Present: Same as before.

The direct examination of E. P. KENYON was resumed by Mr. Mitchell as follows:

Q. Referring to the date of June 16th, 1899, did you have any conversation with Mr. Carter on that date?

Mr. DILLON: That is objected to as being incompetent, immaterial, irrelevant, inadmissible under the pleadings, impertinent, not the best evidence and as leading.

A. I did.

Mr. MITCHELL:

Q. Have you before you the memorandum or report—any memorandum or report of that conversation?

Mr. DILLON: The same objection, and I wish it to appear that the report is used.

A. I have.

Mr. MITCHELL: Is that report or memorandum of the same character as those you have already spoken of?

Mr. DILLON: The same objection and I wish to give the same reasons as given last above, as well as the evidence attempted to be elicited here is *ex parte* entirely.

A. It is.

Mr. MITCHELL: Is this memorandum in your handwriting?

1302 Same objection.

A. It is.
Q. I will ask you to examine that memorandum.
A. (Witness refers to paper.)
Q. Do you recollect what conversation took place between you and Mr. Carter on June 6th, 1899?

Objected to as incompetent, irrelevant, immaterial, not the best evidence, as leading and *ex parte* evidence.

A. After refreshing my memory by notes made at the time I do.
Q. State what that conversation was.
A. Well, Mr. Carter came to the hotel that noon, and in reply to my question as to where he had been during the forenoon, he said he had been to the public library where he had had his papers, did his work, considerable of it, and had there been considering the draft of a contract that he would be willing to enter into between Mr. Bloodgood and other attorneys whom he said were going to assist him in the prosecution of this case, and also had been working

on a draft of what he called the second indictment, which was to be found by the United States grand jury which would sit in a short time, or would convene in a short time. We had dinner and some general conversation after that., went to the post office, I believe, possibly up to the United States district attorney's office, then went to the Phister hotel where Mr. Carter stated—or in general conversa-
1303 tion which ensued he made the remark "What do you think the Bankers people would be willing to give to have this prosecution stopped?" either that or words to that effect. I told him I didn't know, it would all depend upon how forcibly it could be brought to their attention, that it would be necessary for them to do something in the way of buying him off. He replied, " Well, they will have a chance to determine that question before long."

Mr. DILLON: I move that the answer be stricken out as not responsive, and as being immaterial, impertinent, incompetent and *ex parte* and not the best evidence.

Mr. MITCHELL: I am referring to the date of June 7th, 1899; did any conversation take place between you and Mr. Carter on that date?

Same objection.

A. Yes, sir.

Q. Have you before you any memorandum or report of your conversation made by you at that time?

A. I have.

Same objection.

Q. I will ask you to refer to that.

(Witness refers to paper.)

Q. State if you recollect what the conversation was at that time?

Mr. DILLON: That is objected to as incompetent, imperti-
1304 nent, immaterial and not the best evidence, as leading and *ex parte* evidence.

Mr. MITCHELL: State what that conversation was.

Same objection.

A. At that time and at various times prior to that, as Mr. Carter was with me a great deal of the time, I was furnishing him meals at the hotel, and other incidentals, the question came up by himself and by me as to where I was to be reimbursed for those expenses, and on this day he suggested that the only way he could see where I would ever play even was when he got his return from the Bankers Life Association prosecutions. He would then reimburse me. I suggested to him that he might die in the meantime, and I didn't see that I would have any show then at all. He stated he would be willing to enter into an agreement with me whereby if he did

die that his estate, or heirs, would pay to me the results of any moneys that might accrue to them through this prosecution—that is, a percentage of it. There was a general conversation on this subject in reference to what the Bankers Life would be willing to give if they could have this prosecution stopped. That was almost a daily talk with us at our meetings, that and as to how he was going to be sure that he got a square deal between himself and his attorneys, and in this conversation of this day he stated as a result of our contemplated trip to St. Paul and Minneapolis which we at that time, I think, decided on, he would like to come home
1305 with forty thousand dollars in his clothes.

Mr. DILLON: I move the answer be stricken out as being immaterial, incompetent, irrelevant and impertinent.

The WITNESS: I won't be sure that it was right on top of that that Mr. Carter drew—suggested the drawing of a contract that I was to have 10 per cent. of any moneys which accrued to him as the result of a receivership of the Bankers Life Association, whereby at that time he expected to be appointed receiver of the Bankers Life Association in case there was one appointed.

Mr. DILLON: I move that the answer so far be stricken out as not the best evidence, and also as being *ex parte*.

Mr. MITCHELL: Calling your attention to the date of June 10th, 1899, did you have any conversation with Mr. Carter on that day in connection with the Bankers Life Association?

Same objection.

A. I did.

Q. Have you before you any written report or memorandum in your own handwriting?

Same objection.

A. I have.

Q. Of that conversation?

Same objection.

A. Yes, sir.

Q. I will ask you to read that memorandum.

1306 A. (Witness refers to paper.)

Q. Do you recollect what that conversation was?

Same objection.

A. After refreshing my memory I do.

Q. State what that conversation was.

Same objection.

A. Upon our meeting this day we had some general conversation —talk in which I think I spoke to Mr. Carter in reference to some

of his family affairs. I do not know whether it was then or whether it was prior that I learned about his having got his wife——

Q. Wait a minute. All we want is any conversation relating to the affairs of this company.

A. There was some conversation as to whether he had had a talk with his attorney there in Milwaukee regarding the contract, and I think it was after dinner I suggested to him that possibly it would be a good idea to draw up that contract which he had mentioned, between himself and myself several days prior, which he assented to, and we went to the public library where he drew up a contract.

Q. Was that contract executed by you and him at that time?

Mr. DILLON: I make the same objection and as not the best evidence, the contract itself being the best evidence, and as being impertinent, irrelevant, immaterial, incompetent and not admissible under the pleadings.

1307 A. It was.

Mr. MITCHELL: Have you had in your possession an original of that contract?

Same objection.

A. I have had.

Q. Do you know what has become of that contract so in your possession?

Same objection.

A. I do not.

Q. Have you it in your possession now?

Same objection.

A. I have not.

Q. Do you know what disposition you made of it?

Same objection.

A. I think I gave the contract to Mr. Burke, I either did that or sent it to the Chicago office of the Thiel service.

Q. Have you examined the files of the Thiel service to ascertain of that contract is in the office of the service at the present time?

Same objection.

A. I have.

Q. Did you find that contract?

Same objection.

A. I did not.

Q. Did you make any copy of that contract at that time?

1308 Same objection.

A. I did.
Q. Have you that copy?

Same objection.

A. I have.
Q. I show you Defendants' Exhibit 16, and ask you if this exhibit is the copy made by you of the contract between you and Mr. Edmund D. Carter? (Handing witness paper.)

Objected to as incompetent, irrelevant, immaterial, impertinent, as leading and no foundation laid for it.

A. It is.
Q. Is this Exhibit 16 in your own handwriting?

Same objection.

A. It is.
Q. When was it made?

Mr. DILLON: I object to that; the paper speaks for itself.

A. June 10th, 1899.

Mr. MITCHELL: I offer Defendants' Exhibit 16 in evidence.
Mr. DILLON: I object to that as incompetent, immaterial, impertinent, irrelevant, no foundation for it, inadmissible under the pleadings, as secondary evidence and also as *ex parte* evidence.
Which exhibit is hereto attached and made a part of these depositions.

1309 Mr. MITCHELL: I will ask you if at the time that contract was prepared, if its language was composed by you or by Mr. Carter?

Same objection.

A. It was written and composed by Mr. Carter. I made a suggestion or two as to phraseology, and he seemed to ignore it, made no reply.

Mr. DILLON: I move that the answer be stricken out as not being responsive.

Mr. MITCHELL: In what city did the transactions and conversations that you have already referred to that took place between you and Mr. Carter occur?

Same objection.

A. The greater portion of them took place in Milwaukee.
Q. Were you at any time during the month of June, 1899, in the city of Minneapolis?

Same objection.

A. I think I was.
Q. State whether or not Mr. Carter was there with you.

Mr. DILLON: I make the same objection, and also that the attorney is leading the witness.

A. He was.
Mr. MITCHELL: Did you meet Mr. Carter in Minneapolis?

Same objection.

Q. Or did you and he go up together?

Same objection.

1310 A. We went up together.
Q. Did Mr. Carter state to you what the purpose was in going to Minneapolis?

Same objection.

A. Yes, sir.
Q. What did he say in regard to it?

Same objection.

A. Well the purpose in going to Minneapolis was to see attorneys there and to hasten the bringing of the contemplated action through attorneys at Milwaukee, wherein it had been suggested that they were to call a meeting of certain policy holders and proceed along certain lines, further, with the idea in mind that the company upon learning as they did, that Mr. Carter and I were in Minneapolis, would make overtures for some sort of a settlement and payment to Mr. Carter for his desisting in his efforts to have a receiver appointed for their company.

Mr. DILLON: I move the answer be stricken out for the reasons above given.

Mr. MITCHELL:

Q. Where did you and Mr. Carter stay in Minneapolis?

Same objection.

A. At a hotel called the Holmes.
Q. You have made some reference in your testimony to a contract which you stated Mr. Carter said he proposed to have
1311 entered into between himself and some attorneys in regard to the prosecution of the suit against the Minnesota Mutual Life Insurance Company, then known as the Bankers Life. Was any such contract prepared or written out?

Same objection.

A. There was.
Q. Was that contract in pen and ink or in typewriting?

Mr. DILLON: I make the same objection and as not the best evidence.

A. It was in pen and ink first, drawn by Mr. Carter. I had it typewritten for him I think, I won't be sure about that, I had many papers typewritten for him.

Mr. MITCHELL:

Q. Were you with Mr. Carter much of the time during that trip to Minnesota?

Same objection.

A. Almost constantly.

Q. How long were you in Minnesota with him at that time?

Same objection.

A. A week or ten days.

Q. Were any efforts made by Mr. Carter at that time to get in touch with the officers of the Bankers Life Association?

Mr. DILLON: The same objection and also that these ques-
1312 tions are leading.

Mr. MITCHELL: I will add this to the question: Or to inform the said officers that he, Carter, was in Minnesota?

Same objection.

A. Well, I would be unable to answer that question specifically. I think Mr. Carter and I were interviewed there by a reporter, whether that might be called an effort to get it before the Bankers Life people or not I could not say.

Q. By a reporter do you mean a reporter for the newspapers?

Same objection.

A. Yes sir.

Q. Did Mr. Carter make any statement to the reporter in your presence in regard to the Bankers Life?

Same objection.

A. Yes sir.

Q. Were you and Mr. Carter in St. Paul during your trip to Minnesota in June 1899 that we have referred to?

A. We were.

Q. Calling your attention to date of June 19th, 1899 did any conversation take place between you and Mr. Carter on that date?

Mr. DILLON: I make the same objection as being *ex parte* evidence, immaterial incompetent and not the best evidence.

A. There was.

1313 Mr. MITCHELL:

Q. Did you make any written memorandum at that time of this conversation?

Same objection.

A. I did.

Q. Have you that memorandum before you?

Same objection.

A. I have.

Q. I will ask you to refresh your memory from it?

Same objection.

A. (Witness refers to paper.)

Q. State if you recollect where that conversation occurred?

Same objection.

A. The conversation throughout the day first commenced in Minneapolis at our hotel and extended from there to St. Paul, various places in St. Paul and latterly at the Ryan hotel there.

Q. State what conversation took place between you and Mr. Carter at the Ryan hotel on that date?

Same objection.

A. At that time it appears we had seen a reporter who had had some interviews with Mr. Carter and he had stated to Mr.
1314 Carter that the Bankers Life people had wanted to see him and it was after seeing this man that Mr. Carter had this conversation with me in which he said "I wonder what the Bankers Life people want to see us for, it must be to make some sort of a deal, that if that was the case I had got to handle that part of it," I think, that he would not settle for any smaller amount than $50,000 or $60,000 or an annuity—I will change that: In effect he said that he would have to have an income of at least $2,000 or $3000 a year in case they wanted to deal, either one, a lump sum or an income, and he further stated "They may try to deal with you for less, but that is the smallest amount that I will agree to take."

Mr. DILLON: I move to strike out the answer as not responsive.

Mr. MITCHELL:

Q. Did he make any statement as to where this money was to be turned over?

Same objection.

A. I think he said he wanted it deposited in London to his credit, or some place outside of the United States at all events, I would not be sure now where but some place outside of the United States.

Q. Where did you and Mr. Carter go after you left Minnesota?

Same objection.

A. We returned to Milwaukee.

1315 Q. Calling your attention to the date of June 23rd, 1899, did you have any conversation with Mr. Carter on that date?

Same objection.

A. Yes, sir.
Q. Have you any memorandum made by you of that conversation?
A. Yes, sir.
Q. Was this memorandum made by you at that time?

Same objection.

A. It was.
Q. Have you that memorandum before you?

Same objection.

A. I have.
Q. I will ask you to refer to it?

Same objection.

A. (Witness refers to paper.)
Q. State where that conversation took place?

Same objection.

A. State where it took place?
Q. Yes.
A. That took place in my room in the Republican house in Milwaukee.
Q. State what that conversation was, what took place between you and Mr. Carter on that date?

Mr. DILLON: That is objected to as immaterial, irrelevant,

1316 incompetent, impertinent and not admissible under the pleadings in the case, as *ex parte* evidence, not the best evidence and being taken from not a memorandum but from a daily report to the detective agency in the form of letters, and the further objection that it is leading?

A. At various times Mr. Carter and I had been together up to this date and this subject of getting the Bankers Life Association to pay him something had been under discussion and I went over the matter in detail asking him what he had to give them in return; we had often discussed the case, but from my point of view he never had any case.

Mr. DILLON: I move that be stricken out.

The WITNESS: He on the other hand was stating that he had, that he had certain evidence in the way of papers, letters, communi-

cations and so forth and on this day particularly I had talked with him on the subject very fully, in fact we went to our room, or my room and talked the matter over and he said that he would make out a list of all that he would turn over and what he would agree to do in case he was dealt with. He sat down at my desk or table in the room and wrote out very near all of a sheet of note paper, suddenly stopping he said, "Oh, I have spoiled this," tore it up and threw it into the cuspidor and turning to me he said, "You
1317 write it out." I took a piece of note paper and wrote what he dictated to me, handed it to him to read and comment upon and he suggested that certain things be scratched out which were scratched out and I then wrote on the bottom of it a notation to the effect that I had written it at the dictation of E. D. Carter and the date and so forth, and later on I——

Q. Was that memorandum written by you at the dictation of Mr. Carter?

Same objection.

A. It was.

Q. Were the words written down by you the words that Mr. Carter used?

Same objection.

A. They were.

Q. Have you that memorandum so made before you?

Same objection.

A. I have.

Q. What did Mr. Carter do with this memorandum that you had written after he had read it over and made the changes that you refer to?

Same objection.

A. He returned it to me.

Q. I will show you "Defendants' Exhibit 17" and ask you if that is the memorandum you made at that time under the dictation of Mr. Carter?

1318 Same objection.

A. All except those two words here "Bankers Life."

Mr. MITCHELL: I will offer in evidence "Defendants' Exhibit 17" except the words "Bankers Life."

Mr. DILLON: That is objected to as being incompetent, irrelevant, immaterial, impertinent, not the best evidence, *ex parte* evidence and not admissible under the pleadings and issues in the case.

Which Exhibit 17 is attached hereto and made a part of the deposition.

Mr. MITCHELL:

Q. You have heretofore stated, Mr. Carter was at this time preparing a new indictment to be submitted to the grand jury against the officers and trustees of the Bankers Life Association. Did you ever see this proposed indictment?

Same objection.

A. I did.
Q. Who exhibited them to you?

Same objection.

Q. Have you ever had possession of this indictment?

Same objection.

A. I did at one time.
Q. From whom did you obtain possession?

Same objection.

A. Mr. Carter.
1319 Q. How did you get possession of it?

Same objection.

A. He gave it to me.
Q. I show you "Defendants' Exhibit 9" and ask you to state what that is without stating the substance of it?

Same objection.

A. Apparently the paper that Mr. Carter gave me.
Q. Did you ever see Mr. Carter write?

Same objection.

A. I have.
Q. More than once?

Same objection.

A. On a good many occasions.
Q. Are you acquainted with his handwriting?
A. I am.
Q. I will ask you in whose handwriting is this paper marked "Defendants' Exhibit 9"?

Same objection.

A. I should say it was Mr. Carter's handwriting.
Q. How sure are you of that fact?

Same objection.

A. Well, it has every indication of being his handwriting.

Mr. DILLON: I move that the answer be stricken out as not responsive.

A. I think I saw him write a part of it.

1320 Mr. DILLON: I move to strike out what he thinks.

Mr. MITCHELL: I will offer in evidence "Defendants' Exhibit 9."

Mr. DILLON: That is objected to as immaterial, incompetent, irrelevant, inadmissible under the pleadings and *ex parte* evidence and not properly and sufficiently identified.

Which exhibit is attached hereto and made a part of these depositions.

Mr. MITCHELL: I will show to you "Defendants' Exhibit 19" which purports to be an enveloped stamped and postmarked, addressed to "Mr. Edward P. Kenyon, care of Hotel Wyoming Chicago Illinois," and ask you to state what that is if you know?

Same objection.

A. What this is here (indicating)?

Q. What the paper is, the whole exhibit?

Same objection.

A. This is an envelope directed to me care of the Hotel Wyoming Chicago Illinois in the handwriting I should say of Mr. Carter.

Q. Did you ever have that in your possession?

Same objection.

A. I did.

Q. How did it come to you?

Same objection.

1321 A. It came to me through the United States mail at the Hotel Wyoming and there forwarded to room 701 Monadnock building.

Q. What if anything was enclosed in that envelope at the time that you received it?

Same objection.

A. A letter from Mr. Carter was enclosed in that envelope under date of August 15th, 1899.

Q. I show you "Defendants' Exhibit 18" which purports to be a letter written from the Republican house in Milwaukee by Mr. Carter to you under date of August 15th, and ask you to state what that is if you know?

Same objection.

A. It is a letter to me in reply to one that I wrote him on the 14th of August 1899.

Q. Is that Exhibit 18, that letter, the one that was enclosed in the envelope marked "Exhibit 19"?

Same objection.

A. It was.
Q. Is that letter in Mr. Carter's handwriting?

Same objection.

A. It is.
Q. Can you state approximately the date on which that letter was received by you?
A. Well, it was on or about August 16th, 1899.

1322 Mr. MITCHELL: I offer in evidence "Defendants' Exhibits 18 and 19."

Mr. DILLON: They are objected to as immaterial, irrelevant incompetent, impertinent, inadmissible under the pleadings and *ex parte* evidence.

Which Exhibits 18 and 19 are hereto attached and made a part of these depositions.

Mr. MITCHELL: Mr. Kenyon, I show you paper marked "Defendants' Exhibit 20," which purports to be an envelope postmarked with cancelled stamp, addressed to Edward Porter Kenyon, Hotel Wyoming, Chicago," and ask you to state what that is (handing witness paper)?

Same objection.

A. It is an envelope which contained a letter.
Q. Has that ever been in your possession?

Same objection.

A. It has.
Q. How did it come to you?

Same objection.

A. Delivered to me through the United States mail.
Q. In whose handwriting are the words "Edward Porter Kenyon, care of Hotel Wyoming, Chicago Illinois"?

Same objection.

A. In the hand of Mr. Carter.

Q. Was anything enclosed in that envelope at the time
1323 that you received it?

Same objection.

A. There was a letter.
Q. I will show you the paper marked "Defendants' Exhibit 21," and ask you if you know what that is (handing witness paper)?

Same objection.

A. This is the letter that came in this envelope.
Q. Came in the envelope marked——
A. "Defendants' Exhibit 20."
Q. In whose handwriting is that letter marked "Exhibit 21"?

Same objection.

A. In that of Mr. Carter.

Mr. MITCHELL: I offer in evidence "Defendants' Exhibits 20 and 21."

Mr. DILLON: They are objected to as incompetent, immaterial, irrelevant, impertinent and not admissible under the pleadings, *ex parte* evidence, and also as regarding matters transpiring prior to the beginning of this suit.

Which "Exhibits 20 and 21" are hereto attached and made a part of these depositions.

Mr. MITCHELL: Mr. Kenyon, state substantially as near as you can when you received through the mail, "Defendants' Exhibits 20 and 21"?

Same objection.

1324 A. On or about August 20th, 1899.

Q. I will call your attention to the paper marked Defendants' Exhibit 12 which purports to be an envelope post marked, and so forth, addressed to Edward P. Kenyon, Esq., care of the Wyoming hotel, Chicago, Illinois, with the words "E. D. Carter" written in the upper left-hand corner, and ask you to state if you know what that is?

Same objection.

A. An envelope which contained a letter from Mr. Carter.
Q. Has that envelope ever been in your possession before?

Same objection.

A. It has.
Q. How did it come to you?

Same objection.

A. Through the mail.
Q. State approximately when you received that envelope marked Defendants' Exhibit 12?

Same objection.

A. On or about August 22nd or 23rd.
Q. In whose handwriting are the words "Edward P. Kenyon, Esq., care of the Wyoming hotel, Chicago, Illinois"?

Same objection.

A. I should say it was Mr. Carter's.

Q. Give the initials.
A. E. D. Carter.
Q. In whose handwriting are the words "E. D. Carter" in the upper left-hand corner?

1325 Same objection.

A. In Mr. Carter's—E. D. Carter's handwriting.
Q. I will show you Defendants' Exhibit 11, which purports to be written from the Republican house, Milwaukee, under date of August 27th, to you, and which purports to be signed by Edmund David Carter,—you may state if you know what that is.

Same objection.

A. This letter was contained in this envelope (indicating).
Q. The letter marked Defendants' Exhibit 11.
A. Yes, sir, was contained in the envelope Defendants' Exhibit 12.
Q. Was this letter enclosed in this envelope at the time you received the envelope through the mail?

Same objection.

A. It was.
Q. Whose handwriting is this letter?

Same objection.

A. In that of Mr. Edmund David Carter.

Mr. MITCHELL: I offer in evidence Defendants' Exhibits 11 and 12.
Mr. DILLON: They are objected to as immaterial, incompetent, irrelevant, inadmissible under the pleadings in the case, and *ex parte* evidence.
Which exhibits are hereto attached and made a part of these depositions.

1326 Mr. MITCHELL: Mr. Kenyon, how long did this connection between you and Mr. Carter continue?

Same objection.

A. Why, we were together from about the 1st day of May up to about the 25th day of August.
Q. What was the occasion of your separating from Mr. Carter?

Same objection.

A. We had some disagreement about certain papers that I wanted and he didn't want to let me have them.
Q. What papers do you refer to?

Same objection.

A. A paper—a contract between Mr. Carter and certain attorneys which had been signed by Mr. Carter and by one of the firm of attorneys.
Q. What was that disagreement?

Mr. DILLON: Objected to for the same reasons and also as not the best evidence.

Question withdrawn.

Mr. MITCHELL: Was that disagreement in writing or in conversation?

Same objection.

A. I think it was in conversation.
Q. State the substance of it.

Mr. DILLON: The same objection and as not being the best evidence.

1327 A. Why, I asked him for the paper that it might be in my possession. He refused to give it to me. I told him that we would cease there to be companions or friends or on the same standing that we had been prior to that, as I had been paying his board there at the hote-, or, at least, his meals, and furnishing him his funds, if I could not have the papers under my control, why, I wanted to sever the connection.

Mr. DILLON: I move the answer be stricken out as not responsive.

Mr. MITCHELL: That was in the year what?

Same objection.

A. 1899.
Q. I will call your attention to a letter which purports to be written from the Plankington house in Milwaukee under date of February 25th, 1900, to you, and which purports to be signed by Edmund David Carter, which paper has been marked Exhibit B, and is attached to the affidavit of E. P. Kenyon, and was filed on November 27th, 1901, with Henry B. Lang, clerk of the United States circuit court for the district of Minnesota, which exhibit and the affidavit to which it is attached were used by the defendants on a motion heretofore made to require the plaintiff- to give security for costs in this cause, and I will ask you to state if you know what that is? (Handing witness paper.)

Mr. DILLON: The same objection, and also that the ques-
1328 tion is leading.

A. It is a letter received by me through the United States mail from Mr. Edmund David Carter.
Mr. MITCHELL: About what date was that letter received by you?

Same objection.

A. On or about February 28th or March 1st, 1900.
Q. In whose handwriting is the written portion of that letter?

Same objection.

A. In that of Mr. Carter's.

Mr. MITCHELL: We offer this letter in evidence, and as the original letter is already part of the files of the court in this cause, for the purposes of identification we herewith offer a copy of this letter marked Defendants' Exhibit 22.

Mr. DILLON: That is objected to as being incompetent, immaterial, impertinent, and not the best evidence, no foundation being laid for the offer, and *ex parte* evidence.

A copy of which letter, Exhibit 22, is hereto attached and made a part of these depositions.

Mr. MITCHELL: Mr. Kenyon, I show you Defendants' Exhibit 3, which purports to be an envelope under the letter head of Dillon & Goetz, post-marked Chicago, and addressed to Mr. Charles Miller, Furniture Mfg., 284 Homer street, Chicago, Illinois, and ask you to state if you know in whose handwriting the words "Mr.
1329 Charles Miller, Furniture Mfg., 284 Homer street, Chicago, Illinois," are.

Same objection.

A. I do.

Q. In whose handwriting are those words?

Same objection.

A. Mr. Carter's.

Q. What Mr. Carter?

Same objection.

A. Mr. Edmund David Carter.

Mr. MITCHELL: I renew our offer in evidence of Defendants' Exhibits 4 and 5.

Mr. DILLON: They are objected to on the same grounds as given above.

Mr. MITCHELL: I call your attention to Defendants' Exhibit 14, which purports to be an envelope with the printed letter head of Dillon & Goetz, post-marked Chicago, and addressed to Mr. Ed Maher, attorney at law, Chicago, Illinois, 615 stock exchange, and ask you to state if you know in whose handwriting are the words "Mr. Ed Maher, attorney at law, Chicago, Illinois, 615 stock exchange"?

Same objection.

A. I should say that was Mr. Carter's handwriting.

Q. What Mr. Carter?

A. Mr. Edmund David Carter.

Mr. MITCHELL: The defendants herewith renew their offer
1330 in evidence of Defendants' Exhibits 13, 14 and 15.

Same objection.

Mr. MITCHELL: Defendants offer in evidence Defendants' Exhibit 8.

Mr. DILLON: That is objected to for the same reason and also as not being properly identified.

Which exhibit is hereto attached and made a part of these depositions.

Mr. MITCHELL: You may cross-examine.

Mr. DILLON: We move that the evidence given by the last witness be excluded and stricken from the records of the case as being immaterial, incompetent, irrelevant, impertinent, as being *ex parte* evidence, no foundation for it, inadmissible under the pleadings and issues of the case, and as not the best evidence, and that all other testimony taken under the commission to take these depositions, including the testimony of this witness, be excluded for like reasons, and it be stricken from the files and records of the case at the expense of the defendants.

Cross-examination waived.

EDWARD P. KENYON.

Subscribed and sworn to before me this 15th day of May, A. D. 1902.

MARSHALL E. SAMPSELL,
Commissioner.

Adjourned.

1331 EDWARD MAHER, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Mitchell and testified as follows:

Q State your full name?
A. Edward Maher.
Q. Where do you reside?
A. 450 West 65th street, Chicago.
Q. What is your occupation?
A. I am a lawyer.
Q. Where is your office?
A. 615, 616 Chicago Stock Exchange building, Chicago.
Q. Have you at any time received any communications in regard to any suit against the Bankers Life Association formerly known as such and now the Minnesota Mutual Life Insurance Company?

Mr. DILLON: That is objected to as immaterial, irrelevant, impertinent, not admissible under the issues and pleadings and no foundation laid?

A. I have.

Mr. MITCHELL:

Q. In what way did that communication come to you?

Same objection.

A. By mail—through the mails.
Q. Where was this communication received by you?

Same objection.

1332 A. At my offices in Chicago.
Q. I will call your attention to "Defendants' Exhibit 13" and ask you to state what that is?

Same objection.

A. This was the envelope that came through the mails which I received on October 15th 1901, and it contained two papers either identical with the papers shown me as "Defendants' Exhibit 14" and "Defendants' Exhibit 15." Whether these previse papers are the ones received or not I cannot state but they are identical in tenor and effect and appearance, in that envelope.
Q. When you state that these papers "Exhibits 14 and 15" that you are not certain that they are the identical papers enclose-, you do not mean to include the envelope "Exhibit 13"?

Same objection.

A. No sir, the envelope "Defendants' Exhibit 13" is the envelope that contained the papers precisely alike in every respect with "Defendants' Exhibits 14 and 15."
Q. What did you do with those papers so received?

Mr. DILLON: I make the same objection and also that the questions are leading.

A. I wrote on the corner of the envelope "What does this mean? E. M." enclosed it in an envelope addressed to the Minnesota Mutual Life Insurance Company St. Paul Minnesota, put two
1333 one cent stamps on and mailed it that date, October 15th.
Q. Did you enclose anything but the envelope in that?

Same objection.

A. I did, sir, I enclosed papers identical with "Exhibits 14 and 15."

Mr. MITCHELL: I offer "Exhibits 13, 14 and 15" in evidence.
Mr. DILLON: Those are objected to as being incompetent, irrelevant, immaterial, inadmissible under the pleadings and no foundation laid for them.
Which exhibits are attached hereto and made a part of these depositions.

Mr. MITCHELL:

Q. Is this pencil memorandum, the words "What does this mean, E. M." on "Defendants' Exhibit 13" in the writing of any person *that you know*?

Same objection.

A. It is in my writing, placed there on October 15th 1901.

Q. Did any person ever come to see you in regard to any suit or proceeding against the Mutual Minnesota Life Insurance Company?

Same objection.

A. Yes sir, three or four persons.

Q. Was it before or after that circular was received?

Same objection.

1334 A. Afterwards.

Q. Where did those interviews take place?

Same objection.

A. In my offices Chicago Stock Exchange building.

Q. Were those calls made on you on more than one occasion?

Mr. DILLON: The same objection and also that all such evidence is *ex parte*.

A. I think four or five different calls were made on different occasions.

Mr. MITCHELL: State what took place at those interviews.

Same objection.

A. I think the first interview was with a gentleman named McKenna who is the Chicago agent of this company; he stated in effect at that time that the suit was a blackmailing suit and that the company was amply protected and that I need have no concern about the outcome of the litigation. That was very shortly after October 15th. I then received a call from a gentleman who gave me his name and I have forgotten the name; he said that he was connected with this litigation on the part of the plaintiff; he told me that he was one of the counsel and undertook to give me a history of his side of that trouble and requested me to sign a paper similar in all respects to "Defendants' Exhibit 15." I told him that I had forwarded the circular letter and this paper to
1335 the company and did not have it. He said that he could get another one and requested my signature which I declined to give. That interview may have been the latter part of October, at all events it was within a month or six weeks from the receipt of the original paper. I asked him briefly concerning his purposes and the purposes of this suit, I told him I didn't like the looks of it and would not become a party to the transaction in any way.

Mr. DILLON: I ask that the answer be stricken out as immaterial, incompetent, irrelevant *ex parte* and not responsive to the question.

Mr. MITCHELL:

Q. Can you describe the personal appearance of the person who called upon you representing that he was interested in behalf of the plaintiff?

Same objection.

A. I cannot. My recollection is that I never saw the gentleman either before or since and did not charge my mind with that feature of it. He told me he was a lawyer but I didn't know him as a member of this bar.

Q. I will call your attention Mr. Maher to this gentleman sitting here who just came into the room (indicating Mr. Carter). Did he ever call on you in regard to this matter?

Same objection.

A. I don't think I ever saw that gentleman before this
1336 minute.

Cross-examination.

By Mr. DILLON:

Q. How many times did he call on you, Mr. Maher?
A. This gentleman that I speak of?
Q. Yes?
A. I don't know.
Q. Evidently it was not from any one connected with this litigation was it?
A. Why he told me he was, he said that he was anxious to have me join with these other parties.

EDWARD MAHER.

Subscribed and sworn to before me this 16th day of May, A. D. 1902.

MARSHALL E. SAMPSELL,
Commissioner.

1337 Plankington house.

American and European plan, W. B. King, manager.

MILWAUKEE, *November 25th*, 1900.

DEAR KENYON: Yours of the 14th to hand. Glad to hear from you and that you are enjoying life with the Canucks. I am pretty much the same as when I last saw you, trying to do something in the line of fire adjusting while awaiting explosion of the B. L. Association, which even is more promising than ever. Would like to bor-

row $50 to pay expenses while waiting, but don't really know where to negotiate the forbearance, however that is *nullum tui damnatta negatie*, as Dr. Holmes would say, and does not interest you either from the standpoint of novelty or profit. Anent my quondam friend Tonkewicz. He asked me to attend to some private business for him, which I did the best I knew how, but which did not suit him; he said I should have done it otherwise. I said no harm resulted from the manner in which I attended to the matter. He then said he wished I would leave his place, which I gladly seized the opportunity of doing, as I had told him I didn't want his hospitality two or three times previously, but he insisted and I consented. I paid him his advances to me and released my stuff (library &c.) which he held as security. I paid him about 25 per cent. interest in addition, notwithstanding which he handed me a bill for three
1338 bottles of cream balm, $1.50. a week or so after, which I declined to pay, as I not only never got anything of the kind from him for which I hadn't paid, but when I released my stuff and paid him he distinctly said that that was in full for all. He is a peculiar genius, he persists in playing with fire and will some day find himself if he doesn't quite, in the middle of the flame. While he keeps it up of course I am pretty pleased to stay away. More anon.

Yours &c."

(Signed) EDMUND DAVID CARTER.

1339 DEFENDANTS' EXHIBIT "1." E. D. C.

MILWAUKEE, WIS., *Oct.* 12, 1901.

To the members of the Minnesota Mutual Life Ins. Co., formerly the Bankers Life Association of Minnesota.

DEAR SIRS: At the instigation and request of a great many policy holders we have brought suit in the United States circuit court at St. Paul, Minn., against the above named company on behalf of ourselves and all others who will join us asking for the appointment of a receiver to wind up its affairs according to law, on the grounds of gross and fraudulent mismanagement in changing its plans and perverting its funds. This was deemed the only means by which our mutual interests therein could be in the least degree preserved.

Whether your policy is in force at the present time or not you are proportionately interested with us in the proper distribution of its funds yet remaining and hence we ask your co-operation. Please, therefore, sign the enclosed slip authorizing our attorneys, Dillon & Goetz, Masonic temple, Chicago, Ill., and our counsel, John F. Byers, Lumber Exchange building, Minneapolis, Minn., to represent you that your interests may be equally protected with

our own and mail same at once to attorneys or counselor
1340 as per addresses above given.

Trusting that you will act promptly in this matter as it is of the utmost importance, we remain,

Yours truly,

J. C. IVERSON.
SAMUEL WRIGHT.

1341 DEFENDANTS' EXHIBIT 2. E. D. C.

OCTOBER, —, 1901.

To Dillon & Goetz and John F. Byers:

I hereby authorize you to join me in thw suit now pending againsnt the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota, to obtain the relief necessary for the protection of my rights as a member of the Bankers Life Association of Minnesota under certificate No. — issued on the — day of —— A. D. 1—— for $—.

(Signed) ——.

1342 DEFENDANTS' EXHIBIT 3. E. D. C.

(This consists of an envelope addressed and marked as follows:)

Return in 5 days to
Dillon & Goetz, attorneys,
Masonic temple, Chicago.

MR. CHARLES MILLER,

Furniture Mfg.

284 *Homer Street,*

Chicago,
Ills.

Two cent stamp duly cancelled.
Postmarked Chicago, Ill. Oct. 12, 1901 4.30 p. m.

1343 DEFENDANTS' EXHIBIT 4. E. D. C.

MILWAUKEE, WIS., *Oct.* 12, 1901.

To the members of the Minnesota Mutual Life Ins. Co., formerly the Bankers Life Association of Minnesota.

DEAR SIRS: At the instigation and request of a great many policy holders we have brought suit in the United States circuit court at St. Paul., Minn., against the abovenamed company on behalf of ourselves and all others who will join us asking for the appoint-

ment of a receiver to wind up its affairs according to law, on the grounds of gross and fraudulent mismanagement in changing its plans and perverting its funds. This was deemed the only means by which our mutual interests therein could be in the least degree preserved.

Whether your ploicy is in force at the present time or not you are proportionately interested with us in the proper distribution of its funds yet remaining and hence we ask your co-operation. Please, therefore sign the enclosed slip authorizing our attorneys Dillon & Goetz, Masonic temple, Chicago, Ill., and our counsel, John F. Byers, Lumber Exchange building, Minneapolis, Minn., to represent you that your interests may be equally protected with our
1344 own and mail, the same at once to attorneys or counsellor as per addresses above given.

Trusting you will act promptly in this matter as it is of the utmost importance, we remain,

Yours truly,

J. C. IVERSON.
SAMUEL WRIGHT.

1345 DEFENDANTS' EXHIBIT "5." E. D. C.

OCTOBER —, 1901.

To Dillon and Goetz and John F. Byers:

I hereby authorize you to join me in the suit now pending against the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota, to obtain relief necessary for the protection of my rights as a member of the Bankers Life Association of Minnesota under certificate No. — issued on the — day of — A. D. 1 — for $—.

(Signed) —— ——.

1346 DEFENDANTS' EXHIBIT "6." E. D. C.

To the members of the Minnesota Mutual Life Ins. Co., formerly the Bankers Life Association of Minnesota.

DEAR SIRS: At the instigation and request of a great many policy holders we have brought suit in the United States circuit court at St. Paul, Minn., against the above named company on behalf of ourselves and all others who will join us asking for the appointment of a receiver to wind up its affairs according to law, on the grounds of gross and fraudulent mismanagement in changing its plans and preverting its funds. This was deemed the only means by which our mutual interests therein could be in the least degree preserved

Whether your policy is in force at the present time or not you are

proportionately interested with us in the proper distribution of its funds yet remaining and hence we ask your co-operation. Please, therefore, sign the enclosed authorizing out attorneys, Dillon & Goetz, Masonic temple Chicago, Ill., and our counsel, John F. Byers, Lumber Exchange building, Minneapolis, Minn., to represent you that your interests may be equally protected with our own and mail same at once to attorneys or counselor as per addresses above given.

Trusting you will act promptly in this matter as it is of utmost importance, we remain,

Yours truly,

J. C. IVERSON.
SAMUEL WRIGHT.

1347 DEFENDANTS' EXHIBIT 7. E. D. C.

OCTOBER, —, 1901.

To Dillon and Goetz and John F. Byers:

I hereby authorize you to join me in the suit now pending against the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota, to obtain the relief necessary for the protection of my rights as a member of the Bankers Life Association of Minnesota under certificate No. — issued on the — day of —— A. D. 1— for $—.

(Signed) ——.

1348 DEFENDANTS' EXHIBIT 8. *A.* D. C.

Headquarters certificate holders Bankers Life Association of Minnesota, 38 Merrill building.

MILWAUKEE, WIS., *Dec. 4th*, 1900.

To Messrs. C. H. Bigelow, M. Auerbach, J. B. Sanborn, W. R. Merriam, and C. Livingston, trustees of the Bankers' Life Association of Minnesota.

GENTLEMEN: Still having under consideration your proposition as contained in the circular letter of the association dated November 2d, 1899, reproduced below, we request that you inform us as to the particulars of the new departure you therein announce, in reply to the following questions, before we take decisive action in the matter:

1. As the premium on your new guaranteed option policy is equal to that of regular legal reserve life insurance companies using the combined experience mortality tables, to which you have shifted the association from the American tables formerly used by it in computing its rates, and you state in your new guaranteed option policy that you hold out of its premium the full net reserve
1349 according to the combined experience table of mortality, what connection has the original trust fund of the association with this new guaranteed option policy?

2. If your new guaranteed option policy has no connection with the original guarantee trust fund of the association, what disposition do you propose to make of the guaranty trust pledge of the members who take the new guaranteed option policy, in case you fail to get all the members of the association to take that policy?

3. If the association keeps individual accounts with its members, as per its sworn statement to the Wisconsin insurance department in 1898, and as required by the laws of Wisconsin, set forth in the open letter of the commissioner of that department, dated May 15th, 1897, does the amount you credit on the three first premiums on the new guaranteed option policy represent the difference between the original guaranty trust fund pledge of the member taking the guaranteed option policy, and the amount to his credit in the individual account referred to?

4 If the amount you credit on the first three premiums on the new guaranteed option policy does not represent the whole difference between the amount of the guaranty trust fund pledge and the amount to the credit of the individual accounts of the members taking the guaranteed option policy, how much of that difference is represented by the amount you credit on the three first premiums on that policy?

1350 5. As we are members in good standing, having punctually paid all assessments made on us, will you please give us itemized statements of our individual accounts so sworn to — be kept with us?

6. If you will not give us such itemized statements, will you please inform us why you will not?

7. If the members taking the new guaranteed option policy may have money from the association to use in part payment for that property, why cannot we have an equal amount of money from the association to buy whatever we please with, or by what authority do you limit us to the alternative of taking this new policy scheme, or being "frozen out" by "advancing rates" on us, as per threat in the circular letter from the association reproduced below?

8. If the credits you give, and have given to members who take the new guaranteed option policy, as for instance on No. 27,895, as follows: On the premium of $142.20, payable annually, the sum of $51.91, on the premium due October, 1899; $51.92 on the premium due October, 1900, and $51.92 on premium due October, 1901, are not out of money the common property of the association, or any part of the amounts to the credit of the above referred to individual accounts of the members, what connection is there between the members' original certificates and the new guaranteed option

1351 policy, or why do you cancel the members' original certificate as a condition of taking the new policy proposition?

9. How do you reconcile the circular letter from the association, reproduced below, and your new guaranteed option policy, at a premium nearly double the rate paid on the original membership certificate, and equal to that of regular legal reserve life insurance

companies using the combined experience mortality table, while still retaining in your proposed new policy, as per printed proviso therein, the right to charge against it any reduction of reserve caused by "unexpected losses and expenses," with your former representation, so widely distributed to members and the public generally through the United States Post Office establishment, monthly, up to the time you were indicted by the Federal grand jury for so doing, as follows:

"The foundation principle."

The central feature of the Bankers' Life Association is the guaranty trust fund—it is the bulwark of the company. So long as a member meets his own payments promptly he cannot suffer in consequence of the negligence of others, for this fund will protect him."

10. In the application for your new guaranteed option policy we see the following:

1352 "I do hereby irrevocably consent that article *01* of the articles of incorporation of the Bankers' Life Association of Minnesota may at any time be changed and amended so that the same when amended and changed shall read as follows:

"All amounts paid to this company to secure payment for death of its members shall be used only for that purpose, and meanwhile shall be invested in such securities as are authorized by the insurance laws of the State of Minnesota, all interest on such securities shall only be used to pay death losses."

If the changes, in effect, you have been making in article 10 since 1884, without the consent of the members, as required therein, are lawful, why do you ask the members, as above, to consent to changing that retiary article at this late day?

(Stamped as below)
Rec'd 12/14 1900
Ref'r'd to —— —— 190–
Ans'd by —— —— 190–

1353 Cortlandt M. Taylor, president; Gen. J. B. Sanborn, vice pres't; Douglas Putnam, secretary; C. H. Bigelow, treasurer.

Trustees: C. H. Bigelow, M. Auerbach, J. B. Sanborn, W. R. Merriam, C. Livingston.

The Bankers Life Association of Minnesota has the largest cash reserve fund in proportion to its membership of any company on the assessment plan in either Europe or America.

Over two million dollars paid in death losses. Assets over $865,000.00. U. S. registered bonds as securities.

$560,000.00 (par value) U. S. 4% bonds deposited with insurance department of Minnesota in trust for policy holders.

MILWAUKEE, WIS., *Nov.* 2, 1899.

—— ——, city.

DEAR SIR: It is my desire in addressing you at this time to advise you of a new departure that our company has taken in going out entirely of the assessment business and establishing and writing policies absolutely on a legal reserve basis, with rates, face of contract and all options guaranteed and written plainly on the
1354 face of contract, whereby giving one the most absolute guaranty which he did not have on the old policy, as you are aware that the old policies never carried a guaranteed rate and was never an asset until death terminated it.

The new policy carries a guaranteed loan, paid up, and extended insurance values and can be used as an immediate asset at any period after the third year.

What prompted the company to take this departure was this: We have for the past year and a half gone through a most thorough actu-rial investigation, by the most prominent actuaries of this country, and it was the concensus of their opinion that our former rates on the old contract were not adequate to protect us in our future mortality

Taking this situation under serious consideration our directors considered it advisable that as a change of rate was inevitable, the proper time to protect the company and its policy holders was at the present period when our finances and position were in the most flourishing condition, and company in a position to grant our old policy holders our new guaranteed option without a new examination and as a credit to the new premium a sum equal to the entire reserve that has been paid to us and its earnings from date of payment.

Where the reserve notes have not yet matured, they are cancelled and returned and new policy issued without examination.

1355 This proposition is meeting with the most positive favor among our policy holders, and they are transferring their old contracts for new ones about as fast as we can reach them.

The stability permanence and management of our company has never been questioned and our financial condition has never been more prosperous than at present, and in presenting to you our new policy we do so with the utmost confidence that it canot fail to meet your approval after you have seen same and considered the proposition that we have to submit to you.

The writer will remain in your city some little time and my address while here will be at the Blatz hotel. If you will drop me a line designating time and place for an interview, I will be more than pleased to respond to your demand and go into the utmost detail of the matter with you.

Trusting to hear from you at a very early date, and thanking you in advance for same, I am,

Yours respectfully,

C. W. LEONARD,
State Manager.

Very truly,

Frank H. Fiedler	19426	Jno. W. Campsie	
A. B. Giulfuss	7155, 7156, 7157	Henry Kuenzli.	Policy No. 14422
Henry Arnstein	22284	Walter Read	20983, 20984, 20985
1356 S. M. Green	25863, 25864, 25865	A. H. Riemer	16606
Thomas Fitzgibbon, M. D.		Julius R. Riemer	16607
C. R. Jackwitz	15734	Patrick Donnelly	7343
Aug. F. Muell	24185	Rud. Reinke	11815, 11816, 11817
C. J. Dyer		Thomas J. Neacy	20986, 20987, 20988

1357 DEFENDANTS' EXHIBIT "9." E. D. C.

In the District — of the United States of America for the Eastern District of Wisconsin, of the June Term, in the Year of Our Lord One Thousand Eight Hundred and Nonety-nine.

EASTERN DISTRICT OF WISCONSIN, *ss:*

The grand jurors of the United States of America inquiring in and for the eastern district of Wisconsin, upon their oath present;

That* Courtland M. Taylor, Douglas Putnam, John B. Sanborn, Charles M. Bigelow and Maurice Auerbach, pretending under the false fictitious and assumed name of, the Bankers Life Association of St. Paul Minnesota, to be carrying on the business of a life insurance company, on the natural premium system, with a guarantee to all persons who should purchase its policies of insurance, and become members thereof, that said company's represented guaranty trust fund "enables the company to discharge its contracts in full whether members pay or fail to pay" and that "So long as a member meets his own payments promptly he cannot suffer in consequence of the negligence of others for this fund will protect him;" at the time of committing the offense or offenses hereinafter

*(In margin in pencil:) Get correct names.

1358 mentioned, had knowingly wilfully and falsely devised a scheme and artifice to defraud, that is to say, by divers false pretences subtle means and illusive and deceptive representations to obtain and acquire for themselves and from divers persons to this grand inquest unknown, a large sum of money, and thereby to cheat and defraud each of such divers persons thereof out of the several amounts; and in the manner and form and for the purpose herein set forth, which said fraudulent artifice and scheme was in words matter and form devised developed and put in to operation in the manner following; to-wit, a corporation was to be and was in fact pursuant to such scheme and artifice organized under the laws of the State of Minnesota, on the 4th day of August, 1880 and located at Saint Paul therein; without capital stock, and not for profit; under the name of the Bankers Association of Minnesota and for the ostensible purpose and with the general plan of operation

First. To obtain and record the antecedents circumstances and business qualifications of all its members, to register their applications for employment as well as all applications for employees and to put the respective applicants in communication with each other, with recommendations according to such record.

Second. To assess and collect from its members and thereupon pay over to the families of its deceased members stipulated sums of money to be secured to them by the personal obligations

1359 of its members guaranteed by sufficient pledges of money and the investment thereof meanwhile in United States registered bonds. That it was provided and declared in the articles of incorporation of such corporation and by laws, among other things, that any male person not less than eighteen or over sixty years of age and being of good repute for business integrity and the owner officer or clerk of a bank, or recommended thereby and approved by the medical director of said company, may be admitted to one membership therein upon his application therefor and upon his deposition with and to the credit of said company the following sums of money:—1st a sum equal to his age, counting to his nearest birthday, in pledge to secure payment of all assessments against him

occasioned by the death of members during his life and to be known as his guarantee deposit: 2d a sum equal to two per cent. of his guarantee deposit in full for the first assessment against him occasioned by the death of a member: 3d a membership fee equal to half his guarantee deposit: 4th his *pro rata* proportion of the annual expense assessment for the unexpired portion of the company's fiscal year; and that "Each membership of this company shall and will pay thereunto on the fourth Monday of September in each year, an assessment not exceeding fifteen per cent. of his guarantee deposit to be made for and on account of operating expenses, and to be known as his periodic assessment, and upon the death of each member
1360 he shall and will also pay to said company on demand therefor an assessment not exceeding two per cent. of his guarantee deposit—the same to be by said company paid to the family of the deceased member, and to be known as his casual assessment." "All assessments upon members of this company whether periodic or casual, shall be apportioned among them *pro rata*, that is to say, in proportion to the amounts of their guarantee deposits respectively, and the same shall be payable at the depository where the member lodged his application for membership, or at the successor thereof;" and that, "A member of this corporation shall continue such only as long as he shall promptly and in good faith pay thereto his proportion of all the periodic and casual assessments thereof, and in case of default on his part in that behalf, all money paid by him, or pledged to said company, shall and may nevertheless be used and applied to the purposes for which the same were so paid or pledged;" and, that "All amounts paid to this company to secure payments of assessments occasioned by the death of its members, shall be used only for that purpose, and meanwhile the same shall be and remain invested in United States registered bonds and shall constitute and be known as the guarantee trust fund; such bonds shall be made payable to this company, and shall be transferable or convertible only upon resolutions of its board of trustees; and such board shall have the exclusive charge and control thereof; all interest realized from such bonds shall mean-
1361 while be used to defray the company's operating expenses. This article shall never be amended or in any way at all changed, without the consent of every member of this company to be given in writing, signed by him and filed with the company's secretary, and reciting in full the proposed amendment or change," and that "All losses occasioned by the death of members shall be collected by this company from its members, or in case of default on the part of any member the amount of his assessments on account of such loss shall be paid out of his guarantee deposit;" and that "All vacancies in said board of trustees, whether occasioned by death or resignation, shall be filled by the remaining members of said board; and one member thereof shall be elected biennially by the members; the election of a member of the board of trustees shall be by ballot; members shall vote in person and not by proxy;

such board of trustees shall have power to reduce the rate of assessments for death losses as well as for its operating expenses; in case the same prove greater than necessary to discharge the obligations of said company, and to amend these articles (of incorporation) and to generally direct, manage and control the business and concerns of this company; these by-laws may be altered or amended by the vote of four fifths of the members of the board of trustees," that "Upon the death of each member of this company his family shall receive therefrom 1st. The whole amount pledged thereto by the deceased; 2d, a sum equal to two per cent. of the then sub-
1362 sisting guarantee trust fund not exceeding, however, two thousand dollars ($2000) for each full membership; on- thousand dollars ($1000) for each half membership held by the deceased, and in force at the time of his death; and not exceeding six thousand dollars ($6000) in any case," and, to thus organize such a corporation as a mutual fraternal benevolent association for the primary object of bringing together for mutual aid, advantage and coöperation by the investigation of antecedents, circumstances, influence and business qualifications, members seeking employment and those requiring employees, thereby found worthy reliable and well qualified as such under the limitations aforesaid, and put them into communication with each other, and incidentally thereto, to furnish the famiiies of such persons deceased, stipulated sums of money to be secured to them by the personal obligations of such pe-sons thus associated together; and at the same time and notwithstanding such organization and its primary object, to falsely and fraudulently claim, and represent to such divers persons, that such corporation was a life insurance company, and possessed of a sufficient amount of available reserve funds to enable it to meet all its outstanding insurance obligations, and that it took from each person becoming a member a fixed maximum amount, as sums of money annually, sufficient, with the hereinbefore described guaranty trust deposit required of such person, to enable the company to pay at death the principal sum
1363 or amount named and specified in its, the aforesaid corporation's certificate of membership tp be payable at the death of such member to whom such certificate is issued. And from time to time, at stated intervals, to print publish and disseminate by means of the Post Office establishment of the United States to such divers persons to this grand inquest unknown, large quantities of circular letters blank forms and advertisements containing and having printed thereon false fraudulent and deceptive representations and statements concerning the worth purpose and financial standing of such corporation, and the names of men of financial credit and influence in the business world who had indorsed and approved the methods system and plan of such corporation and who were members thereof, as well as the integrity and faithfulness of the officers of such corporation, and the management and use and preservation of its funds, withholding therefrom any and all reference to the fact

that such corporation was other than a natural premium life insurance company to such divers persons, specimens of which circular letters blanks A part of which false, fraudulent and deceptive representations contained in and printed upon said circular letters blank forms and advertisements, specimens of which are hereto attached marked Exhibits —, —, —, —, were in words and language as follows to-wit:

(The portions underscored are wrirren in ink in the original and erased with pencil.)

1364 After a printed heading giving the name and place of business of the company, the names of its officers and trustees, and what purports to be a record of fifteen years of its business, and a summary of the general character of the corporation in which the following language occurs, namely: "The central feature of the Bankers Life Association is the guarantee trust fund, which enables the company to discharge its contracts in full whether the members pay or fail to pay. So long as a member meets his own payments promptly, he cannot suffer in consequence of the negligence of others, for this fund will protect him—the body of the letter is as follows:

"ST. PAUL, MINN., ——.

To whom it may concern:

We invite your attention to the enclosed circulars containing partial list of Chicago, St. Louis, Cleveland and Cincinnati members, *and call your special attention to the local and home references* from the leading bankers, manufacturers, professional and business men of *these cities.* Please examine closely the features, which I am sure you will find attractive.

Our financial growth since August 31st, 1891, may be of interest to you"—then follows tabulated statement showing such alleged growth—and the letter closes as follows: "*If you will fill in the enclosed blank and return it to us, we will give you on the reverse*
1365 *side a statement of the cost of insurance in this association.*

Yours truly,

(Signed) CLARENCE E. SECOR,
Superintendent of Agencies."

The enclosed blank referred to was enclosed in said letter, and is of the following tenor, to wit:

"Mr.....
Age.....

For $..... insurance in the Bankers Life Association, St. Paul, Minn.

The estimated maximum cost will be..... $.....

Payable as follows:

April—Mortuary call..... $.....
July—Mortuary call..... $.....
Sept.—Operating expenses (annual dues)..... $.....
Dec.—Mortuary call..... $.....

Total ..... $.....
Or total cost per $1000 ..... $.....

Your payment to the guaranty trust fund will be $....., payable in two notes of $..... each, in one and two years respectively (without interest). This money is invested exclusively in U. S. registered bonds, and is your guarantee to pay the above premiums to enable the association to meet its death losses promptly, whether members pay or not.

1366 In addition to the above, your cash entrance premium is $..... ..... payable when application is taken.

Note.

While the annual cost of carrying the insurance is stated above to be $..... per $1,000, it is worthy of your consideration that the actual cost at your age, for the past three years, has been only $..... per $1,000."

Whereas in truth and in fact the said Courtlandt M. Taylor, being then and there the president of such corporation and Douglas Putnam being then and there the secretary of such corporation; and John B. Sanborn Charles N. Bigelow M-urice Auerbach and William R. Merriam being then and there the trustees of such corporation well knew that the maximum annual amount charged each member of the company by it; together with the guaranty trust deposit required of each person upon becoming a member was palpably and absurdly inadequate to enable said company to pay the principal sum named in its certificates of membership at the death of the holder of such certificate whether members pay or fail to pay; and they the said Courtlandt M. Taylor, Douglas Putnam, John B. Sanborn Charles M. Bigelow, Maurice Auerbach and William R. Merriam well knew to be wholly false, fraudulent and deceptive, the statement made by them in the circular letters, blank forms and advertisements

hereinbefore described viz: "The central feature of the Bank-
1367 ers Life Association is the guaranty trust fund which enables the company to discharge its contracts in full whether members pay or fail to pay. So long as a member meets his own payments promptly he cannot suffer in consequence of the negligence of others for this fund will protect him. It has the largest amount of assets for each $1000 in force that has ever been created by any of the leading companies upon the natural premium plan. It is the only life insurance company of any kind that invests its funds exclusively in United States bonds for the protection of its members." And the said Courtlandt M. Taylor being then and there the president of such corporation Douglas Putnam being then and there the secretary of such corporation and John D. Sanborn Charles M. Bigelow Maurice Auerbach and William R. Merriam being then and there the trustees of such corporation intended never to use the guaranty trust deposits required of persons becoming members of such corporation in the manner required specified and stated in the articles of incorporation of said corporation, as herein set forth, for the use and execution of such guaranty trust deposits, viz:— all losses occasioned by the death of members shall be collected by this company from its members, and in case of default on the part of any member the amount of his assessments on account of such loss shall be paid out of his guarantee deposit. And the said Courtlandt M. Taylor being then and there the president of such corporation and Douglas Putnam being then and there the secretary
1368 of such corporation and John B. Sanborn Charles M. Bigelow, Maurice Auerbach and William R. Merriam being then and there the trustees of such corporation knowingly wilfully and falsely intended such corporation organized as hereinbefore set forth under the articles of incorporation as also set forth herein, and promoted and advertised through and by means of the Post Office establishment of the United States the false fraudulent and deceptive circular letters, printed lists, blank forms and advertisements hereinbefore described in quantities of not less than 50000 per month, to divers persons to this grand inquest unknown, as a scheme and artifice to defraud for the purpose of perpetuating and retaining themselves in the control and management of the business and funds of such corporation and to secure to themselves the gain and advantage arising from the use control and possession of large sums of money to be acquired by such fraudulent scheme and artifice. And the said Courtlandt M. Taylor being then and there the president of such corporation and Douglas Putnam being then and there the secretary of such corporation, and John B. Sanborn, Charles M. Bigelow Maurice Auerbach and William R. Merriam being then and there the trustees of such corporation so devising and intending did heretofore to-wit on the — day of —— A. D., 189–, in and for executing such scheme and artifice to defraud and attempting to do so took and received and caused to be taken and received from the Post

Office establishment of the United States at Milwaukee, Wis-
1369 consin within the above district a certain letter or packet containing ont printed circular letter one printed list, one printed blank foem and one printed advertisement as hereinbefore described, a specimen of each of which enclosures respectively is attached hereto and made a part hereof, marked Exhibit A, B, C & D, addressed and directed as follows to-wit: —— —— Milwaukee Wisconsin; which said letter or packet they the said Courtlandt M. Taylor, Douglas Putnam, John B. Sanborn, Charles M. Bigelow Maurice Auerbach and William R. Merriam, delivered and caused to be delivered to —— —— at Milwaukee Wisconsin within the above district with the lawful postage thereon prepaid, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

1370 DEFENDANTS' EXHIBIT 11. E. D. C.

Alvin P. Kletzsch. Herman O. Kletzsch.

(Vignette.) Republican house, Chas. F. Kletzsch Co., proprietors.

MILWAUKEE, WIS., *August* 22/99.

(In pencil) Mr. Burke.

MY DEAR KENYON: Somewhat surprised at your failure to arrive Sunday or yesterday, or advice from you as to why. I have been compelled to call into use my resources.

As you doubtless are aware, the contract I have (signed by you) with you (of which you have a copy) makes you a proper party with me, to defend any action by the company against persons for anything done in attempting its sequestration.

After perusing that contract slowly I think you will come to the conclusion to either be more candid and prompt with me, or withdraw altogether—a consultation with a confidential lawyer may help you in these conclusions.

I am going ahead with the business myself today, and if
1371 you think the water too deep for you just send the photos. to me here c/o Republican house, and I will attend to the matter myself, otherwise if I do not receive the photos., tomorrow I will turn the contract I have with you over with the rest of what I have, before I pull out for a foreign trip, which would necessitate a like expedient on your part unless you don't mind facing the music under such conditions. I found a copy of the important letter of May 19th that will do me until I need the photos. which I can trade without *if I have to.* Awaiting prompt reply I am

Very truly, EDMUND DAVID CARTER.

To E. P. Kenyon Esq. Chicago, Ill.

1372 DEFENDANTS' EXHIBIT 12. E. D. C.

This consists of an envelope addressed and marked as follows:

EDWARD P. KENYON, Esq.,
c/o The Wyoming Hotel,
Chicago,
Ill.

Vignette of Republican house in upper left hand corner.
Duly stamped with 2c. stamp, cancelled.
Postmarked Milwaukee, Wis. Aug. 22 6-30 p. m. 1899.
Back stamped Chicago Ill. Aug. 22 11 p. m. '99.

1373 DEFENDANTS' EXHIBIT 13. E. D. C.

This consists of an envelope addressed and marked as follows:
(In pencil) What does this mean? E. M.

Mr. ED. A. MAHER,
Att'y at Law,
Chicago,
Ill.

615 stock ex.

Duly stamped with 2c. stamp cancelled.
Postmarked Chicago, Ill. Oct. 14 8.30 p. m. 1901
In upper left hand corner Return in 5 days to Dillon & Goertz, attorneys, Masonic temple, Chicago.
Received Oct. 6 1901 T. R. P. 10/16
Ref'r'd to..... 190–
Ans'd by..... 190–
In blue pencil Ans'd 10/16/01

1374 DEFENDANTS' EXHIBIT 14. E. D. C.

MILWAUKEE, WIS., *Oct.* 12, 1901.

To the members of the Minnesota Mutual Ins. Co., formerly the Bankers Life Association of Minnesota.

DEAR SIRS: At the instigation and request of a great many policy holders we have brought suit in the United States circuit court at St. Paul, Minn., against the above named company on behalf of ourselves and all others who will join us asking for the

appointment of a receiver to wind up its affairs according to law, on the grounds of gross and fraudulent mismanagement in changing its plans and perverting its funds. This was deemed the only means by which our mutual interests therein could be in the least degree preserved.

Whether your policy is in force at the present time or not you are proportionately interested with us in the proper distribution of its funds yet remaining and hence we ask your coöperation.

Please, therefore, sign the enclosed slip authorizing our attorneys Dillon & Goetz, Masonic temple, Chicago, Ill., and our counsel John F. Byers, Lumber exchange, Minneapolis, Minn., to represent you that your interests may be equally protected with our own and mail the same at once to attorneys or counselor as per addresses above given.

Trusting you will act promptly in this matter as it is of utmost importance, we remain,

Yours truly,

J. C. IVERSON.
SAMUEL WRIGHT.

1376 DEFENDANTS' EXHIBIT 15. E. D. C.

OCTOBER, 1901.

To Dillon and Goetz and John F. Byers:

I hereby authorize you to join me in the suit now pending against the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota, to obtain the relief necessary for the protection of my rights as a member of the Bankers Life Association of Minnesota under certificate No. — issued on the — day of —— A. D. 1— for $—.

(Signed) —— ——.

1377 DEFENDANTS' EXHIBIT (No number).

This consists of an envelope addressed and marked as follows:

Law offices of Edward Maher, rooms 615-616 Chicago Stock Exchange building, Chicago.

Two one-cent postage stamps, cancelled.

MINN. MUTUAL LIFE INS. CO.,

St. Paul,

Minn.

Postmarked: Chicago, Ill. Oct. 15 2.30 p. m. 1901

1378 DEFENDANTS' EXHIBIT 16 E. D. C.

MILWAUKEE, WIS., *June* 10 / 99.

This agreement made and entered into by and between Edward P. Kenyon party of the first part, and Edmund David Carter party of the second part, witnesseth ; that whereas said party of the second part having undertaken the dissolution of a fraudulent corporation known as the Bankers Life Ass., located at St. Paul, Minnesota; hereby contracts with the party of the first part for his services to be rendered in assisting said party of the second part in completing the dissolution of the fraudulent corporation aforesaid, including cash advances made and that may be made to said *said* party of the second part, by said party of the first part, In payment and full consideration of said services and cash advances made and that may hereafter be made, the party of the second part agrees and binds himself his heirs and assigns to pay to said party *party* of the first part, ten per centum of all the money received by said party of the second part in accomplishing the dissolution of the corporation aforesaid. Should the amount received by said party of the second part hereto be paid in full before the commencement of the formal dissolution of said corporation, the amount to be paid to the party of the first part hereunder as aforesaid, shall be paid immedi-
1379 ately thereafter; but if the amount paid to said second party here to be in deferred payments in whatever manner made then the amount to be paid to said first party hereto shall be ten per centum of such payments, and to be paid to said first party hereto when said deferred payments are made to said second party hereto as *fa*oresaid ; but the total of said payments to said first party herein of ten per centum — equal ten per centum of the whole amount received by said second party hereto as if paid without deferment. Provided, however that the total payments to said party of the first part hereunder shall not be in excess of five thousand dollars ($5000,) nor less than twenty-five hundred dollars ($2500,)

EDWARD P. KENYON.
EDMUND DAVID CARTER.

1380 DEFENDANTS' EXHIBIT 17. E. D. C.

(Vignette.) Republican house, Chas. Kletzsch Co., propr*e*itors.

MILWAUKEE, WIS.

Bankers Life.

Correspondence & policies with all partirs whos- claims we are prosecuting, all the evidence accessible to officers viz. verified copies of reports to ins. commissioner, charter and all printed matter of Co. letters, correspondence, policies and so on, correspondence & con-

tracts with local and St. Paul att'ys, [for the dissolution of the Co. by]* in combination for dissolution of the Co.

Copyright & all copies in hand of *in re* pamphlet some 2000 or 3000 and the absence of E. D. C. conspiritor in chief permanently from the shores of America.

Dictated and revised by E. D. Carter June 23/99 written at Carter's request by E. P. K.

1381 DEFENDANTS' EXHIBIT 18. E. D. C.

(Vignette.) Republican house, Chas. F. Kletzsch Co., proprietors.

MILWAUKEE, WIS., *August 15th*/99.

MY DEAR KENYON: Yours of the 14th received through our mutual friend Tonkiewicz by whom it was opened. I am at a loss to understand you regarding hold, as I have no other arrangements made, and to make any, will as you know, be impossible without stopping my work on the case before me. I had hoped to have my mind free to work till Saturday when I would be ready for other emergencies, but this letter of yours leaves me in suspense as to what to do. Let me know by morning whether you can sustain present arrangement till next week, or what you suggest in substitution.

Regarding copies I wish you would have the draught of the indictment I drew up written or typewrited as I will need it bad. The contract I have a copy of, that will do.

Yours, EDMUND DAVID CARTER.

To Edward P. Kenyon, Esq., Chicago, Ill., "The Wyoming."

1382 DEFENDANTS' EXHIBIT 19. E. D. C.

This consists of an envelope addressed and marked as follows:

(Vignette.)
American plan.

If not called for in 10 days return to
Plankinton house,
Milwaukee, Wis.,
W. G. King, manager.

Mr. EDWARD P. KENYON,
Hotel Wyoming,
Chicago,
Ills.

(In pencil:) Room 701 Monodnock block.

Two cent stamp duly cancelled.
Backstamped: Chicago Ill. Aug. 15 7 p. m. 99.

[* Word enclosed in brackets erased in copy.]

1383 DEFENDANTS' EXHIBIT 20. E. D. C.

This consists of an envelope addressed and marked as follows:

E. D. Carter
(Vignette)

EDWARD PORTER KENYON, Esq.,
c/o Hotel Wyoming,
Chicago,
Ills.

Two cent stamp duly cancelled.
Postmarked: Milwaukee Aug. 19 10-30 p. — 1899 Wis.
Backstamped: Chicago Ill. Aug. 20 4 a. m. '99.

1384 DEFENDANTS' EXHIBIT 21. E. D. C.

Alvin P. Kletzsch. Herman O. Kletzsch.

(Vignette.) Republican house, Chas. F. Kletzsch Co., proprietors.

MILWAUKEE, WIS., *Aug. 19th*, '99.

MY DEAR KENYON: I have been expecting to hear from you in answer to mine to you of Tuesday last, but not having heard expected you to put in an appe-rance today at least; in the meantime I have finished pleading and am ready to have time called. So if you have not started for here already do so at once, and we will get to pay dirt without any more delays. Hoping to see you by tomorrow night I am

Yours, etc., EDMUND DAVID CARTER.

To E. P. Kenyon, Esq., the Wyoming, Chicago, Ills.

1335 UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

I, Marshall E. Sampsell, clerk of the United States circuit court for the northern district of Illinois, the commissioner named in the commission hereto annexed, do hereby certify that the reasons for taking the foregoing depositions are that the witnesses above named are material and necessary witnesses in the case in the caption of said deposition entitled, and that they and each of them reside more than one hundred miles from the place of trial of the cause in the caption of said deposition entitled.

I further certify that notice to Messrs. John F. Byers and Messrs. Dillon & Goetz, respectively, counsel and solicitors for the complainants in said cause, of the time and place of taking said depositions, and of the names of the witnesses to be examined, by notifying them to appear at said time and place and to take such part in the examination of said witnesses as they might be advised, was made out and served on said counsel and solicitors as appears from said notice hereto annexed with the proof of such service thereon endorsed.

And I further certify that I was attended by the parties and their counsel at the time and place stated in said notice and in the caption of these depositions, and by the witnesses therein named,
1386 and that said witnesses being of sound mind and lawful age, were, before the commencement of the taking of said depositions, by me each duly and publicly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the case aforesaid, and *was* carefully examined, and that the depositions as given were reduced to writing by Alfred D. Williston, a disinterested person, in my presence and under my direction, and that the depositions of each of said witnesses when completed was by me carefully read over to such witnesses and subscribed by such witnesses in my presence.

And I further certify that the exhibits attached to said depositions are the ones referred to therein; that I have retained the said depositions in my possession until I could deliver the same to the court in which said action is pending, or seal the same up and deposit them in the post office directed by said court.

I further certify that said examination commenced on Wednesday, the 30th day of April, 1902, and continued to and was completed on Thursday, the 1st day of May, 1902, and I do further certify that I am not of counsel or attorney for either of the parties to said cause, nor in anywise interested in the event thereof.

In testimony whereof I have hereunto set my hand and seal this 19th day of May, A. D. 1902.

[SEAL.] MARSHALL E. SAMPSELL,
Clerk U. S. Circuit Court, N. D. of Illinois, Commissioner under the Prefixed Commission.

1387 UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

I, Marshall E. Sampsell, clerk of the United States circuit court for the northern district of Illinois, the commissioner named in the annexed commission, do further certify that my fees for taking and returning the above depositions and the cost and fees of Alfred D. Williston, the person who reduced said depositions to writing in my presence and under my direction, are as follows:

Two hundred and one dollars and twenty-five cents.

MARSHALL E. SAMPSELL

1388 In the Circuit Court of the United States, District of Minnesota, Third Division.

J. C. IVERSON and SAMUEL WRIGHT, Plaintiffs; ESDRAS B. TRUBEY, Intervenor,
vs.
MINNESOTA LIFE INSURANCE COMPANY ET AL., Defendants.

Præcipe for Record.

To Henry D. Lang, circuit clerk of the above entitled court:

You will please insert in the defendants' record in the above entitled cause, the following papers, records and proceedings, to-wit:

First. Appearance of defendants, answer, and all exhibits thereto attached.

Second. Answer to intervening petition of Esdras B. Trubey.

Third. Order fixing amount of bond for costs and bond and complainants' ratification bond.

Fourth. Order for new bond on the withdrawal of J. C. Iverson and bond.

Fifth. Order for additional bond, bond and authority to execute same.

Sixth. Motion to bring in additional parties as plaintiffs
1389 and all affidavits and proceedings on this motion used by complainants and defendants, including the affidavits of Wm. H. Gold, Fred Oberndorf, T. R. Palmer, John Schuette, Henry Kuenxly, &c., and order denying motion for additional parties plaintiff.

Seventh. Affidavits of T. R. Palmer, and Elmer H. Dearth used by defendants on mption for receiver *pendente lite.*

Eighth. Complete return of Examiner H. H. Horn, including all exhibits thereto attached and a complete return of Examiner Louise Trott with all exhibits thereto attached.

Ninth. Complete return of Henry Goodwin commissioner to take testimony, including the testimony of C. H. Scanlan and other witnesses and all exhibits thereto attached.

Tenth. Complete return of Mrashall E. Sampsell, commissioner to take testimony including testimony of Esdras B. Trubey and others, and all exhibits thereto attached.

Respectfully yours,

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

(Endorsed:) Præcipe for defendants' record. Filed July 22nd
1902 Henry D. Lang clerk.

1390 United States Circuit Court.

DISTRICT OF MINNESOTA, *ss:*

I, Henry D. Lang, clerk of the above named court, do hereby certify that I have carefully compared the foregoing paper writings, to-wit:

Answer and exhibits,
Notice of appearance,
Order for appearance.
Answer of defendants to intervening petition of E. B. Trubey,
Order to compel complainants to furnish security,
Bond,
Complainants' ratification of execution of bond,
Motion to bring in additional parties complainants,
Affidavits of Gold, Oberndorf, Palmer, Schuette, Kuenzli,
Order denying motion to bring in new parties complainant.
Affidavits of Palmer and Dearth.
Bond,
Order for additional security.
Return of Examiner H. H. Horn of complainants' testimony and exhibits
Depositions of S. Herbert Wolf, and exhibits,
Returns of depositions taken before Examiners Goodwin and Sampsell and exhibits thereto attached, and depos., Trubey, Kenyon, & Maher and præcipe for complainants' record, with the originals thereof which are in my custody as such clerk, and that said paper writings are correct copies of such originals and of the whole thereof, in the cause therein named.

Witness my hand as clerk and the seal of said court. Done at my office in Saint Paul, Minnesota, this 31st day of July, A. D. 1902.

HENRY D. LANG, *Clerk*,
[SEAL OF COURT.] By LOUISE B. TROTT, *Deputy*.

Thereafter and on August 7th, A. D. 1902 August 8th, 9th and 11th, the following orders were entered of record in said cause, to wit:

1391 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1902, August 7th, 1902.

THURSDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. Charles F. Amidon, judge. Hon. Charles C. Houpt, U. S. district attorney. Hon. William H. Grimshaw, U. S. marshal. Henry D. Lang, clerk. by Louise B. Trott, deputy.

J. C. IVERSEN, SAMUEL WRIGHT, and ESDRAS B. Trubey
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota.
C. Equity. No. 783.

This cause being regularly called for hearing in its order on the calendar the parties appear by their respective solicitors John F. Byers and Messrs. Dillon & Goetz appearing on behalf of the complainants and Messrs. How, Taylor & Mitchell appearing on behalf of the defendants, and said cause coming on for final hearing upon the pleadings, final proofs and records.

Mr. John F. Byers, Esq., opens and states said cause to the court and argues the same on behalf of the complainants.

The court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

Mr. John F. Byers resumes and concludes his argument to the court on behalf of the complainants.

Mr. Wm. D. Mitchell opens and states the case to the court and argues the same on behalf of the defendants.

And the argument of said cause not being concluded at the hour of adjournment, it is by the court ordered that further pro-
1392 ceedings herein be and they hereby are postponed until tomorrow morning at ten o'clock.

Ordered that this court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

1393 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1902, Aug. 8th, 1902.

FRIDAY MORNING.

Court opened pursuant to adjournment.
Present: Hon. William Lochren, Hon. Charles F. Amidon, judges. Hon. Charles C. Houpt, U. S. district attorney. Hon. William H. Grimshaw, U. S. marshal. Henry D. Lang, clerk.

J. C. IVERSEN ET AL.
vs.
MINNESOTA MUTUAL LIFE INSURANCE COMPANY *et al.* } C. Equity. No. 783.

This day come again the parties to this cause by their respective solicitors and the final hearing thereof in equity is resumed and continued as follows, to-wit:

William D. Mitchell, Esq., resumes his argument on behalf of the defendants.

The court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

William D. Mitchell, Esq., resumes his argument on behalf of the defendants.

And the argument of said cause not being concluded at the hour of adjournment, it is by the court ordered that further proceedings herein be and they hereby are postponed until tomorrow morning at ten o'clock.

* * * * * * *

A true record.
Attest:

HENRY D. LANG, *Clerk.*

1394 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1902, Aug. 9th, 1902.

SATURDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, circuit judge. Hon. Charles F. Amidon, judge. Hon. Charles C. Houpt, U. S. district attorney. Hon. William H. Grimshaw, U. S. marshal. Henry D. Lang, clerk.

* * * * * * *

1394½ J. C. IVERSEN ET AL. *vs.* MINNESOTA MUTUAL LIFE INSURANCE Company *et al.* } C. Equity. No. 783. Before Judge Amidon.

This day again come the parties to this cause by their respective solicitors and the final hearing thereof in equity is resumed and continued as follows, to-wit:

William D. Mitchell Esq., resumes and concludes his argument on behalf of the defendants.

John F. Byers, Esq., argues in reply on behalf of the complainants And the argument of said cause not being concluded at the hour of adjournment, it is by the court ordered that further proceedings herein be and they hereby are postponed and continued until Monday morning next at ten o'clock.

Ordered that this court do now adjourn until Monday morning at ten o'clock.

A true record,

Attest: HENRY D. LANG, *Clerk.*

1395 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1902, Aug. 11th, 1902.

MONDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. Charles F. Amidon, judge. Hon. Charles C. Houpt, U. S. district attorney. Hon. William H. Grimshaw, U. S. marshal. Henry D. Lang, clerk.

* * * * * * *

J. C. IVERSEN ET AL. *vs.* MINNESOTA MUTUAL LIFE INSURANCE Company *et al.* } C. Equity. No. 783.

This day come again the parties to this cause by their respective solicitors and the final hearing thereof in equity is resumed and continued as follows, to wit:

John F. Byers, Esq., resumes his argument and continues the same on behalf of the complainants.

Wm. D. Mitchell, Esq., argues further on behalf of the defendants.

And here the court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

1396 John F. Byers, Esq., resumes and argues further in conclusion on behalf of the complainants.

William D. Mitchell, Esq., argues and concludes on behalf of the defendants.

And the court having heard the arguments and statements of the solicitors for the respective parties and being fully advised in the premises, after due consideration announces a decision in favor of the defendants dismissing the bill of complaint upon the merits with costs to be taxed and directs the defendants' solicitors to prepare a decree accordingly to be signed, filed and entered.

Ordered that this court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

Thereafter and on August 12th, the following decision dismissing the bill of complaint was filed of record in said cause, in words and figures as follows, towit:

1397 In the United States Circuit Court, District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, and ESDRAS B. TRUBEY, Substituted for J. C. Iversen, Complainants,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY ET AL., Defendants.

If it were not for the fact that I am closely pressed with work I should be glad to formulate my views in this case in a written opinion. That, however, is impossible. I am confident that further study would in no way modify my judgment as to the correct disposition of the case. The only advantage it could have would be to furnish a more orderly statement of the grounds of the decision than is possible in an oral opinion.

At the outset the charges of fraud and insolvency which are made in the bill must be put aside; they are wholly unsupported by the evidence. On the contrary, this record furnishes entirely satisfactory proof that the officers of the corporation have throughout acted with perfect good faith and in the exercise of an enlightened judgment. They have been actuated at all times by an honest desire to promote the interests of all the members of the association and to

secure their common welfare. What they have done has been justified not only by the condition of this particular company, but by the general experience of a large number of other like enterprises. Nor is there the slightest foundation for the charge that the defendant is insolvent. On the contrary the record shows that its condition under the changes which have been made has steadily improved, This is not only *be* established by the statements of the company. but by the

Testimony of eminent actuaries,

who are entitled to speak with authority on such a subject. Furthermore, it appears from the record that this company is licensed to do business in nearly all of the leading States of the Union, after a careful investigation of its affairs by the insurance department of the several States. These considerations leave not the slightest ground for the charges of insolvency.

Before proceeding further with the merits of this case it may be proper to consider who the complainant in the suit is. The complainant Wright is without any standing in court. When the changes in the company's method of doing business were adopted he elected, with full knowledge of those changes, to cancel his certificate and demand return of the money which he had paid. This he did in writing, so that there is no chance to question the character of his action. Having neglected to cancel his policy and demand back his money, that is the remedy which he was bound to pursue. If he is entitled to any relief it is to be found in an action at law for the recovery of the money which he demanded at the time of the rescission. His claim is therefore simply a money demand which has not been reduced to judgment. For this reason he has no standing in court to maintain a suit like the present. No other policy holders have in fact joined with the complainant in asking the relief demanded in the bill. Mr. Trubey is the only complainant of record, and he is entitled only to such redress as his own rights would justify. My decision of the case, however, would be in no way changed if every person whom the complainant claims to represent were in fact a party upon the record.

There remain for consideration two questions: First: Has the company departed from the fundamental law of its being in a manner forbidden either expressly or by implication by its articles of association? Second: Has the company done anything to impair the vested rights of the holders of its certificates of insurance? It is not claimed by counsel for the complainant that the association has violated any express provision of its charter. He claims that the changes which were made in its method of doing business are so radical as to be forbidden by implication. In determining the force of that contention one must

Look carefully to the charter

itself. Many of the authorities which are cited by counsel for complainant in support of his contention are based upon charters which in themselves contain no express reservation of the right of amendment. The charter of the defendant company specifically reserves to the officers the power of amendment in every particular except one, and it is not claimed that they have made any amendment in that particular. The fact that the power to amend was restricted in one particular throws additional weight upon the scope of the power to amend in other respects. Of course the power to amend did not invest the officers with authority to launch this association into an entirely new business. For example, it could give them no authority to engage in the business of fire insurance. It did, I think, however, reserve to them the power to make any amendment which was reasonably calculated to accomplish the purpose which the association had in view at the time of its formation. Nothing has been done by the officers which violates this principle. The changes which have been made relate entirely to the manner of doing the business, and not to its character. Under the old plan of assessment insurance the members were required to make contributions from time to time sufficient to meet the death losses. In the early stages of the association that was found to be adequate, but as the average age of the members increased and the death rate accordingly increased, the company was confronted with the impossibility of getting in new members. This is the history of all assessment insurance. As soon as the assessments become sufficient in amount to make the charge for the insurance approximately the same as is necessary to secure old-line insurance, persons seeking insurance will choose the certainty of an old-line policy in preference to the uncertainties of assessment insurance. An assessment company can only be kept going by steady increase of its membership, and under the law that I have just adverted to it becomes impossible to keep up

The increase in membership.

The defendant was required to meet this emergency. Three alternatives were presented.

First. It could frankly admit that the plan of doing business upon which it entered must result in failure, and ask that its affairs be wound up and its assets distributed. Second, it could pursue the original plan until bankruptcy actually occurred; or, third, it could adopt such a method of doing business as would perpetuate
1398 the life of the association. The complainant frankly says that the association was bound to know the probable result of its methods of doing business when it started, and that every member is entitled to have that plan of operation either carried out until insolvency ensues, or wholly abandon it and have the effects of the association distributed. This contention wholly disregards the power of amendment that was reserved to the association. The

whole question is simply: How shall the members be required to make such contributions as will be adequate to meet the death losses and continue the company as a going concern? Under the assessment plan, the payments were made after the loss occurred. Under the new method, contributions are made in advance sufficient, under the established rules of mortuary tables, to provide for losses as they shall occur in the future. The change simply relates to the manner of doing the business; it is in no way a change of the essential character of the business upon which the corporation entered at the beginning. The complainant virtually contends that he has a right to have this business carried on in a manner that will, in the light of a very large experience, result in insolvency, in order that he may take the desperate chance of dying before the insolvency actually occurs. The changes that were made have been approved by an overwhelming majority of the association. It would be remarkable, to say the least, if a minority of the members could insist that either the enterprise should be wholly abandoned, or that it should be carried on in a manner which would result in its ultimate failure, and force this course upon a majority of the members, who simply desired to make such changes as, in the light of a very large experience, were necessary to carry on the

Business of the company

permanently and accomplish the purpose which every member had in view at the time the association was formed. What has been said in regard to the change that was made in 1898 is equally applicable to the further change that was made in 1901. The latter change was simply a carrying out to completion of the first modification. It was authorized by express provision of the statute. The course marked out by the statute has been carefully pursued by the company. Complaint is made that proper notice of the meeting at which the change was adopted was not given to the members. The statute, however, expressly provided that in case the change was made, at a special meeting a special notice should be given to the members; but it also contained power to make the change at any regular or annual meeting, and no requirement is contained in the statute on the subject of notice if the change was made at such a meeting. Upon general principles the company was authorized to do at its annual meeting, without special notice, whatever it had power to do under the law. The meeting was very largely attended, and the vote was almost unanimous in favor of the change, there being only a single vote in opposition. The meeting was, therefore, legally held, and its action was legal, unless it is open to objection upon the second ground which I have already mentioned.

This brings us to a consideration of the question whether the changes which were made in 1898 and in 1901 impaired the obligation of those contracts which were in force before the changes were made. It is not claimed that there has been any repudiation of

those contracts, or that the company was authorized by those changes to alter in any way the

Terms of the contract,

then in force. Nor has the company attempted to make any such change. On the contrary, the evidence shows that it has carried out all those contracts fully, in accordance with their terms, and that every death loss has been promptly met. Complainants aver, however, that the amount of assessments has been increased. This, however, was exactly what was to be anticipated from the very nature of the association, and it cannot justly be claimed that the increase in the assessments is attributable to the change in the method of doing business. At the present time there is no complaint that these assessments are unreasonable. On the contrary, the evidence plainly shows that they are in themselves insufficient to pay the cost of the insurance granted under the old contracts. Complainant, however, contends that he was entitled to have the company go forward soliciting members under the old plan of assessment insurance, and that its failure to do so is an impairment of his contract. This contention has already been disposed of. A member had no right to insist that the association should continue its business upon a basis which would, in all probability, result in bankruptcy. The officers of the company assert that there is no intention of permitting the assessments upon the old members to become unreasonable. There is a large fund on hand pledged as a security for the payment of those early members. If by reason of lapses, the assessments should at any time in the future become unreasonable, it will then be time for the injured party to complain. At the present time no such injury has been suffered. No contract has, in fact, been in any way impaired. It would be remarkable if the complainant were entitled to have this association wound up and its purposes defeated by reason, not of injuries suffered, but of injuries anticipated. There is nothing whatever in this case to bring it

Within the terms

of the constitutional provision which forbids the passing of any law impairing the obligation of contracts. Neither the power nor the duty of the association to perform its contracts has in any way lessened.

I ought not to conclude what I have to say in this case without making some reference to the forces that were behind this litigation at the time of its institution. Before the suit was brought it was promoted for months by a man by the name of Carter. It is not necessary to review here the various incidents of his rascally persecution of this defendant.

Counsel for the complainant says that he is a crank. His conduct, however, cannot be covered by any such charitable mantle. He has not acted under a delusion. He is a dishonest rascal.

The evidence leaves no doubt that his conduct in this whole matter has been actuated by no delusion, but by what, if it had been carried to its ultimate purpose, would have been fundamentally criminal. He has not been seeking to rectify anybody's wrongs. His purpose has been to line his own pockets. The court cannot overlook the fact that he was the person in the outset who instigated this proceeding. I wish it understood, however, that these remarks cast no reflection whatever upon Mr. Byers. I have been impressed throughout this trial by his entire candor and fairness, and I believe that he has had no other purpose than to assert a right in which he had entire confidence. I think the young attorneys, Messrs. Dillon and Goetz, were imposed upon by this man Carter. The case was one in which such imposition could easily be practiced. It was quite out of the ordinary line of experience. It was easy for him to juggle with the affairs of the company and present them in such a way as would

Convince a person

that the company had been mismanaged, and the frequent failures of assessment insurance companies would give additional ground for confidence in such a charge. The utmost that can be said about these young men, so far as the record shows, is that they lent a too-easy credence to this man. The record shows that the complainant himself, Mr. Trubey, is engaged in promoting personal injury litigation, and, looking at the entire case, that seems to be the general nature of this suit.

This case is a striking justification of the wisdom of those statutes which are now in force in nearly all of the older States which forbid the institution of any such a suit as this except by the attorney general, at the instance of the insurance commissioner.

It ought not to be open to every disgruntled member to file a bill charging an association of this character with fraud and insolvency, and asking for the appointment of a receiver of its affairs. This is a gross wrong to the credit of the association and to those members who are interested in its promotion.

Suits of this kind led to the passage of the statutes to which I have referred, and at the present time in nearly all of the older Commonwealths there are laws forbidding that any such action should be brought by a private individual. Every private person having a grievance of this character is compelled to submit his case to an officer who by experience and special knowledge can judge of its substantial merits, having before him a full knowledge of the affairs of the association. In no other way can the credit of such enterprises be protected from the most damaging assaults.

This case is wholly without merit. It ought never to have been instituted. A decree will be entered dismissing the bill upon the merits, with costs in favor of the defendants.

Dated August 12, 1902

CHARLES F. AMIDON, *Judge.*

Endorsed: Filed August 12th 1902 Henry D. Lang, clerk.

1399 Thereafter and on August 12th 1902 the following decree was entered of record in said cause towit:

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1902, Aug. 12th, 1902.

TUESDAY MORNING.

Court opened pursuant to adjournment.
Present: Hon. Charles F. Amidon, judge. Hon. Charles C. Houpt, U. S. district attorney. Hon. William H. Grimshaw, U. S. marshal. Henry D. Lang, clerk.

J. C. IVERSEN and SAMUEL WRIGHT and Esdras B. Trubey
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Fos[illegible], Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota. } C. Equity. No. 783.

Final Decree.

This cause came on to be heard at this term and was argued by counsel, Messrs. Dillon and Goetz and John F. Byers, appearing for plaintiffs, Samuel Wright and Esdras B. Trubey (J. C. Iversen having withdrawn from the suit), and Messrs. How, Taylor & Mitchell and Timothy R. Palmer appearing for defendants, and thereupon upon consideration thereof and upon the entire record in this cause and all the evidence therein contained,

It was ordered, adjudged and decreed that the bill of complaint be dismissed upon the merits with costs to the defendants to be taxed as provided by law and the rules of this court.

Dated August 12th, 1902.

CHARLES F. AMIDON, *Judge.*

* * * * * * *

A true record.
Attest:

HENRY D. LANG, *Clerk.*

1400 Thereafter and on August 16th, 1902, the following judgment for costs was entered of record in said cause, to wit:

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1902, Aug. 16th, 1902.

SATURDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, judge. Hon. Charles C. Houpt, U. S. district attorney. Hon. William H. Grimshaw, U. S. marshal. Henry D. Lang, clerk.

J. C. IVERSON and SAMUEL WRIGHT, Complainants, and ESDRAS B. Trubey, Intervening Plaintiff (Substituted for J. C. Iverson),
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

Pursuant to the final decree in this cause dated, filed and entered herein on the 12th day of August A. D., 1902, it is now by the court ordered adjudged and decreed that The Minnesota Mutual Life Insurance Company, one of the defendants herein, do have and recover of and from the complainants Samuel Wright and Esdras B. Trubey herein, and of each of them the sum of one thousand eight hundred and fifteen dollars and twelve cents ($1815.12) its costs and disbursements in this cause this day taxed and allowed, and that it had execution therefor.

In accordance with the agreement and consent of the solicitors for the respective parties hereto, heretofore entered into in open court it is ordered that execution herein be and the same hereby is stayed for the period of forty two (42) days from and after this date.

* * * * * * *

A true record.
Attest: HENRY D. LANG, *Clerk.*

1401 And on the same day the following notice of taxation of costs and disbursements &c. was filed of record in said cause in the words and figures following to wit:—

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Gilbert Henry being by me first duly sworn deposes and says that upon the 14th day of August, 1902, at the city of Minneapolis, in the county of Hennepin, State of Minnesota, he duly served the notice of taxation of costs and disbursements and affidavit hereto attached, upon John F. Byers, solicitor for complainants, by handing to and leaving with one J. F. Barnard, a person of suitable age and discretion then and there in charge of said John F. Byers' office, at No. 436 Lumber Exchange building, Minneapolis, Hennepin county, Minnesota, a true and correct copy thereof.

GILBERT HENRY.

Subscribed and sworn to before me this 15th day of August, 1902.

[NOTARIAL SEAL.] ELEANOR TIGHE,
Notary Public, Ramsey County, Minnesota.

1402 In the Circuit Court of the United States for the District of Minnesota.

J. C. IVERSEN and SAMUEL WRIGHT, Complainants, and ESDRAS B. Trubey, Intervening Plaintiff, Substituted for J. C. Iversen,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company, Formerly the Bankers Life Association of Minnesota, Defendants.

Notice.

To Messrs. Dillon & Goetz and John F. Byers, solicitors and counsel for the above-named plaintiff-:

You will please to take notice that on Sunday the 16th day of August, 1902, at ten (10) o'clock in the forenoon, at the office of Henry D. Lang, Esq., clerk of the above-named court, in the Federal building in the city of St. Paul, county of Ramsey and State of Minnesota, defendants' costs in the above entitled action will be taxed and allowed by said clerk in accordance with the rules of practice of this court and the decree heretofore entered in this cause, and the costs so taxed and allowed will be inserted in the judgment then and there to be entered in favor of the defendant The Minnesota Mutual Life Insurance Company, and against the plaintiffs Samuel Wright and Esdras B. Trubey. The taxation of said costs

will be based upon the bill of costs annexed and made a part of this notice.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

Dated August 14, 1902.

1403 DEFENDANTS' BILL OF COSTS.

1901.

Oct. 15. To paid clerk of court for copy of bill $12.20
Nov. 4. " " " " " " entering appearance 5.00
Dec. 5. " " notary's and county clerk's fees, affidavits of Fleming, Jansen and others used on motion for bond..... 3.25

1902.

Feb. 12. To paid clerk of court additional deposit fee..... 10 00
Mar. 6. To paid clerk of court for copy of replication, of E. B. Trubey. .30
Mar. 18. To paid notary for copy of deposition of Samuel Wright taken on behalf of complainants 1.76
Mar. 18. To paid clerk of court for affidavits, petition and order extending time for plaintiffs to take testimony..... 1.00
Mar. 15. To paid for copy of testimony of Trubey, Capron *et al.* taken at Chicago on behalf of complainants..... 9.60
Mar. 27. To paid clerk of court for copy of bond and affidavits of John F. Byers, and order of court thereon..... 1.20
Apr. 24. To witness fees and mileage paid following named witnesses whose testimony was taken before Marshall E. Sampsell, commissioner at Chicago.

Name.	Residence.	Miles traveled.	Days attended.	Total fees and mileage.
Fred Oberndorf....	Chicago.....	2	1	$1.60
J. H. Pank.....	"	2	1	1.60
W. A. Rennick.....	"	2	1	1.60
Chas. Miller.....	"	20	1	2.00
T. R. Woodard.....	"	2	1	1.60
Edmund David.....	Rock Island, Ill..	362	2	21.10
Walter Dillon.....	Chicago.....	2	1	1.60
Albert Goetz.....	"	2	1	1.60
H. H. Anderson....	"	10	1	2.00
E. B. Trubey	"	2	2	3.10
E. P. Kenyon.....	"	2	3	4.60
Ed. Maher.....	"	2	1	1.60
				44.00

Apr. 24. To paid United States marshal at Chicago, fees and mileage for serving above witnesses..... 38.20
Apr. 25. To paid fees of clerk of United States court at Chicago for issuing subpoena for above witnesses..... 4.90

1404

Apr. 25. To paid witness fees and mileage to the following named witnesses whose testimony was taken before Henry Goodwin, commissioner, at Milwaukee:

Name.	Residence.	Miles travelled.	Days attended.	Total fees and mileage.
C. M. Scanlon	Milwaukee, Wis.	2	1	1.60
John Brehm	Waukesha, Wis.	20	1	2.50
W. R. Knell	Milwaukee, Wis.	2	1	1.60
A. G. Bodden	" "	2	1	1.60
A. B. Geilfuss	" "	2	1	1.60
H. Kuenzli	" "	2	1	1.60
M. Scharel	" "	2	1	1.60
Samuel Wright	" "	2	1	1.60
J. C. Iversen	" "	2	1	1.60

15.30

Apr. 25. To paid United States marshal at Milwaukee fees and mileage serving above subpœnae 11.20

May 15. To paid Marshall E. Sampsell, clerk of the U. S. circuit court, northern district, Illinois, commissioner appointed to take testimony, for taking and returning testimony and making copies to be furnished clerk for making up record for court and respective counsel 261.95

May 17. To witness fees paid S. H. Wolfe, residence New York, city, number of miles travelled 200, one day attended 11.50

May 18. To paid Henry D. Goodwin, commissioner appointed to take testimony at Milwaukee, taking and returning same, and making copies to be furnished clerk for making up record for court and respective counsel 204.26

May 25. To paid insurance commissioner State of Wisconsin, for certified copy of papers used in evidence 4.90

June 10. To paid L. B. Trott, examiner appointed to take testimony, taking and returning testimony and making copies to be furnished clerk in making up record 112.00

June 30. To paid H. Harcourt Horn, examiner taking and returning testimony 168.90

Aug. 12. To paid Henry D. Lang, clerk of court, fees for comparing, binding and making up defendants' record for court and counsel, and additional deposit 407.35

To docket fee 20.00

To attorneys' fee for each witness on behalf of defendants, 29 witnesses at $2.50, each 72.50

$1421.27

1405

1421.27

To fees of clerk of court making final record in equity etc., to be added 103.65

To fees of clerk of court making, binding and certifying complainants' record in equity to be added, if not paid by plaintiffs 290.20

Costs taxed and allowed at $1815.12

St. Paul, Minn. August 16th, 1902,

HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

William D. Mitchell, being duly sworn, says that he is one of the solicitors for the defendants in the above entitled action: that the foregoing is a true and correct statement of the costs and disbursements of the defendant The Minnesota Mutual Life Insurance Company in the above entitled action, and that all of the items thereof have been actually and necessarily paid or incurred therein by and on behalf of said defendant, and that each of the above named witnesses was a material witness for the defendant in said cause, and that each witness necessarily travelled the number of miles set opposite his name going from his said place of residence to and returning from the place of trial, and necessarily attended the number of days set opposite his name,

WILLIAM D. MITCHELL.

Subscribed and sworn to before me this 14th day of August 1902,

ELEANOR TIGHE,

[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

(Endorsed:) Notice of taxation of costs and disbursements and affidavit. Filed August 16th, 1902. Henry D. Lang, clerk.

Thereafter and on September 20—1902 the following notice was duly filed of record in said cause, in words and figures, as follows towit.

1406 In the Circuit Court of the United States of America for the District of Minnesota, Third Division.

J. C. IVERSEN and SAMUEL WRIGHT, and ESDRAS B. Trubey, Substituted for J. C. Iversen, Complainants,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF St. Paul, Minnesota, *et al.*, Defendants. } Notice.

To Messrs. How, Taylor & Mitchell, solicitors for said defendants:

Please take notice that on the 22nd day of September A. D. 1902 at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard, we shall appear before his honor Judge Lochren in the court room in the Federal building, in the city of St. Paul, county of Ramsey and present the petition of Esdras B. Trubey and Samuel Wright praying an appeal in said cause to the Supreme Court of the United States at which time and place you may appear if you see fit.

Respectfully,

JOHN F. BYERS,
Counsel for Complainants.

Received a copy of the above notice on this 20th day of September A. D. 1902.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

(Endorsed:) Notice. Filed September 20th, 1902. Henry D. Lang, clerk.

And on the same day the following petition was filed of record in said cause, to wit:

1407 In the Circuit Court of the United States of America for the District of Minnesota, Third Division.

J. C. IVERSEN and SAMUEL WRIGHT, and ESDRAS B. Trubey, Substituted for J. C. Iversen, Complainants,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF St. Paul, Minnesota, Formerly The Bankers Life Association of Minnesota; C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, Formerly the Bankers Life Association of Minnesota, Defendants. } Petition.

To the honorable judge of said court, in chancery sitting:

Your petitioners Esdras B. Trubey and Samuel Wright, respectfully represent unto your honor,

That they have heretofore filed their certain bill of complaint in the above entitled court, against the above named defendants, and

That thereafter on the 12th day of August 1902 a decree was entered by this honorable court ordering the said bill of complaint dismissed at complainants' costs; from which decree your petitioners hereby pray an appeal to the Supreme Court of the United States.

Your petitioners allege, that in the trial of said cause and the final decree therein by the said court, the following errors were committed;

1408 1st. In not decreeing the statute of the State of Minnesota viz: chapter 175 of the General Laws of the State of Minnesota for the Year 1895, as amended by chapter 143 of the General Laws of the State of Minnesota for the Year 1901, under which defendant association re-incorporated, and changed itself from a mortuary assessment association to a legal reserve life insurance company, unconstitutional and void.

2nd. In not decreeing the change made by trustees of defendant association on January 1, 1899 and thereafter, by issuing the "guar-

anteed option policy," transferring the members to a separate and distinct class, and ceasing to solicit members on the mortuary assessment plan, as being a departure from the original purpose of the organization, and as an impairment of the obligation of the contract and rights of petitioners and as being *ultra vires* and void.

3rd. In not decreeing the act of the trustees of defendant association, and persons to whom such guaranteed option policy *were* issued, in changing, on August 5, 1901, and thereafter, the character and purpose of defendant association from a mortuary assessment association to a legal reserve life insurance company, as being an impairment of the obligation of the contracts and rights of petitioners, and being *ultra vires* and void.

For all of which errors and imperfections in the decree rendered herein and in the trial of this cause your petitioners are desirous of appealing as hereinbefore stated.

1409 Your petitioners therefore pray for an order granting them an appeal to the Supreme Court of the United States from the decision rendered in this cause, and that the clerk of this court be directed to issue a citation of appeal hereof to the appellees herein, and to each of them.

ESDRAS B. TRUBEY,
SAMUEL WRIGHT,
By DILLON & GOETZ,
His Attorneys.

DILLON & GOETZ,
Solicitors for Complainants.

(Endorsed:) Petition. Filed September 20th, 1902. Henry D. Lang, clerk.

And on the same day the following assignments of errors and prayer for reversal was filed of record in said cause, in the words and figures following towit:

1410 In the Circuit Court of the United States of America for the District of Minnesota, Third Division.

J. C. IVERSEN and SAMUEL WRIGHT, and ESDRAS B. TRUBEY, Substituted for J. C. Iversen, Complainants,

versus

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, Formerly the Bankers Life Association of Minnesota, Defendants.

Assignment of Errors to the Supreme Court of the United States.

And now come the said Esdras B. Trubey and Samuel Wright, appellants by John F. Byers, their counsel, and by Dillon & Goetz, their solicitors, and say that in the record and proceedings, and in rendering the decree aforesaid, there is manifest error, in this, to-wit:

1st. The court below erred in not decreeing the statute of the State of Minnesota, viz: chapter 175, of the General Laws of the State of Minnesota for the Year 1895, as amended by chapter 143 of the General Laws of the State of Minnesota for the Year 1901, under which defendant association re-incorporated, and changed itself from a mortuary assessment association to a legal reserve life insurance company, unconstitutional and void.

2nd. The court below erred in not decreeing the change made by the trustees of defendant association, on January 1, 1899, and

1411 thereafter by issuing the "guaranteed option policy" transferring the members to a separate and distinct class, and ceasing to solicit members on the mortuary assessment plan, as being a departure from the original purpose of the association, and as an impairment of the obligation of the contracts and rights of appellants and as being *ultra vires* and void.

3rd. The court below erred in not decreeing the acts of the trustees of defendant association, and persons to whom such guaranteed option policy *were* issued, in changing, on August 5th, 1901, and thereafter, the character and purpose of defendant association from a mortuary assessment association to a legal reserve life insurance company, as being an impairment of the obligation of the contracts and rights of appellants and as being a radical departure from the original purpose of the organization and *ultra vires* and void.

By reason whereof appellants pray that said decree may be reversed, and for their costs herein, and for all other and further relief

in the premises as equity may require and to your honors shall seem meet.

DILLON & GOETZ,
Solicitors for Appellants.
JOHN F. BYERS,
Counsel for Complainants.

(Endorsed:) Assignment of errors, and prayer for reversal: Filed September 20th, 1902. Henry D. Lang, clerk.

Thereafter and on September 22d the following order continuing hearing on order allowing appeal and staying execution was entered of record in said cause, to wit:

1412 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1902, Sept. 22nd, 1902.

MONDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. William Lochren, judge. Hon. Charles C. Houpt, U. S. district attorney. By J. M. Dickey, assistant. Hon. William H. Grimshaw, U. S. marshal. Henry D. Lang, clerk.

J. C. IVERSEN ET AL.
vs.
MINNESOTA MUTUAL LIFE INSURANCE COMPANY *et al.*
} C. Equity. No. 783.

The notice of the complainants in the above entitled cause praying an appeal thereof to the Supreme Court of the United States, returnable at this time and place now coming on to be heard, the parties appear by their respective solicitors, Mr. John F. Byers appearing on behalf of the complainants and Mr. William D. Mitchell appearing on behalf of the defendants.

Whereupon, upon the agreement and consent of the solicitors for the respective parties it is by the court ordered that the hearing herein be and the same hereby is postponed and continued until the 2nd day of October, A. D. 1902 at 10 o'clock in the forenoon at the same place.

It is further ordered that the stay of execution heretofore entered herein, be and the same hereby is extended with all its terms and conditions to and including the 2nd day of October A. D. 1902.

* * * * * * *

A true record,
Attest: HENRY D. LANG, *Clerk.*

Thereafter and on October 2d 1902 the following bond on appeal was filed of record in said cause, in words and figures following to wit:

1413 In the Circuit Court of the United States of America for the District of Minnesota, Third Division.

J. C. IVERSEN and SAMUEL WRIGHT and ESDRAS B. TRUBEY, Substituted for J. C. Iversen, Complainants,
versus
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, Minnesota, Formerly The Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, Trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, Formerly the Bankers Life Association of Minnesota, Defendants.

Know all men by these presents, that we Esdras B. Trubey and Samuel Wright as principals and the Fidelity and Deposit Co. of Maryland, a corporation, as sureties are held and firmly bound unto the defendants above named in the full sum of three thousand five hundred dollars, to be paid to said defendants, their attorneys, executors, administrators and assigns to which payment well and truly to be made we bind ourselves, our heirs, executors. administrators and successors jointly and severally by these presents.

Sealed with our seals and dated this 2nd day of October A. D. 1902.

Whereas, lately in said court in a suit between the principals in this bond and the defendants above named, a decree was rendered against the complainants and in favor of the said defendants and afterward a judgment for costs was entered against the said principals herein and the said Esdras B. Trubey and Samuel Wright having obtained an appeal and filed a copy thereof in the office of the clerk of said court, and a citation directed to the said
1414 defendants citing and admonishing them to be and appear at a Supreme Court of the United States to be held at Washington on the 2nd Monday of October next.

Now, the condition of this obligation is such, that if the said principals herein shall prosecute said appeal with effect and shall pay all costs of such appeal and shall pay the judgment above mentioned if they fail to make the said appeal good, then the above obligation to be void, otherwise to remain in full force and effect.

ESDRAS B. TRUBEY AND
SAMUEL WRIGHT,
By JOHN F. BYERS, *Their Att'y.* [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
[CORPORATE SEAL.] By O. M. METCALF,
A Member of the Local Board of Directors for Minnesota, Agent.

Attest: WM. M. CARSON, *Agent.*

Sealed and delivered in presence of—
A. A. RENÉ.
E. ANDERSON.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 2nd day of October personally appeared before me John F. Byers, to me known to be the attorney of Esdras B. Trubey and Samuel Wright, the principals in the foregoing bond and acknowledged that he executed the foregoing instrument as the free act and deed of his said principals.

ALBERT A. RENÉ,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

1415 STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 2nd day of October, A. D. 1902, personally appeared before me O. M. Metcalf, who being duly sworn deposes and says that he is a member of the local board of directors for Minnesota of the Fidelity and Deposit Company of Maryland, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and the said O. M. Metcalf acknowledged said instrument to be the free act and deed of said corporation.

ALBERT A. RENÉ,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minnesota.*

(Endorsed:) Bond on appeal. The within bond is approved this 2nd day of Oct. 1902. Wm. Lochren, judge. Filed October 2nd, 1902. Henry D. Lang, clerk, by Louise B. Trott, deputy.

And on the same day the following power of attorney, etc, was filed of record in said cause to wit:

1416 In the Circuit Court of the United States of America for the District of Minnesota.

J. C. IVERSEN ET AL.
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY of St. Paul, Minnesota, *et al.* } C. Equity. 783.

Know all men by these presents that I, the undersigned Samuel Wright, one of the complainants aforesaid, and that I, the undersigned Esdras B. Trubey, one of the complainants in the above entitled cause, do and each of us doth hereby appoint and constitute John F. Byers of Minneapolis the attorney of us and of each of us to sign, execute and deliver a bond for appeal by supersedeas, from the above court to the Supreme Court of the United States in

the above entitled cause and do any and all acts in and about the execution of said bond that may be required, and we do hereby each for himself ratify and confirm all that said attorney may do in the premises.

Witness our hands and seals this 23rd day of September, A. D. 1902.

SAMUEL WRIGHT. [SEAL.]
ESDRAS B. TRUBEY. [SEAL.]

1417 STATE OF WISCONSIN, } ss:
Milwaukee County, }

Personally appeared before me, Samuel Wright, known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledged that he signed said instrument for the purposes therein set forth, this 27th day of September A. D. 1902.

W. A. HAYWARD,
[NOTARIAL SEAL.] *Notary Public.*

My commission expires February 13, 1905.

STATE OF ILLINOIS, }
County of Cook. }

Personally appeared before me, Esdras B. Trubey, known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledged that he signed said instrument for the purposes therein set forth, this 23rd day of September A. D. 1902.

F. J. LANG,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed:) Power of attorney authorizing J. F. Byers to execute bond. Filed October 2nd, 1902. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on October 17th the following order allowing appeal was duly entered of record in said cause, in the words and figures following towit:

1418 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1902, Oct. 17th, 1902.

FRIDAY MORNING.

Court opened pursuant to adjournment.
Present: Hon. William Lochren, judge. Hon. William H. Grimshaw, U. S. marshal. By Stephen J. Picha, deputy. Henry D. Lang, clerk. By Louise B. Trott, deputy.

J. C. IVERSEN ET AL.
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE Company of St. Paul, Minnesota, *et al.* } C. Equity. No. 783.

This 14th day of October 1902 came the complainants herein by John F. Byers, their counsel, and having presented to the court their petition praying for the allowance of an appeal intended to be made by them and also praying that a transcript of the record, proceedings and papers upon which the judgment herein was entered, duly authenticated, may be sent to the Supreme Court of the United States and that such other and further proceedings may be had as may be proper in the premises:

Now on consideration thereof the court does allow the said appeal the complainants having given bond according to law in the sum of three thousand five hundred dollars which shall operate as a supersedeas bond.

WM. LOCHREN, *Judge.*

A true record.
Attest:

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

1419 And on October 15th A. D. 1902 the following citation with proof of service was filed of record in said cause, to wit:

Citation.

THE UNITED STATES OF AMERICA, *ss:*

To the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly the Bankers Life Association of Minnesota, and C. H. Bigelow, John B. Sanborn, Maurice Auerbach, Crawford Livingston, Kenneth Clark, Albert H. Lindeke, and J. F. R. Foss, trustees of the Minnesota Mutual Life Insurance Company, formerly the Bankers Life Association of Minnesota, Greeting:

Whereas Samuel Wright and Esdras B. Trubey have lately appealed to the Supreme Court of the United States from a decree and judgment lately entered in the circuit court of the United States for the district of Minnesota made in favor of you, and have filed the security required by law:

You are therefore cited to appear before the said Supreme Court, at the city of Washington on the 12th day of November next to do and receive what may appertain to justice to be done in the premises.

Given under my hand this 14th day of October A. D. 1902.

WM. LOCHREN, *Judge.*

Service of the above citation is admitted this 15th day of October 1902.

HOW, TAYLOR & MITCHELL,
Solicitors for Defendants.

1419½ [Endorsed:] Entered 783. Eq. C. Circuit court U. S. A. district of Minnesota. J. C. Iverson *et al. vs.* Minn. Mut. Life Ins. Co. *et al.* Citation Filed October 15th 1902 Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on November 8th A. D. 1902 the following order enlarging the time to file return, was filed of record in said cause, to wit:—

1420 Circuit Court of the United States, District of Minnesota, Third Division.

J. C. IVERSEN ET AL., Complainants,
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY ET AL., Defendants.

Order Enlarging the Time to File the Record.

It appearing to the court that the complainants in the above entitled action have been allowed an appeal to the Supreme Court of the United States and a citation thereon has been issued and served, which citation was made returnable on the 12th day of November, 1902, and that the rules of said Supreme Court require the record of said case to be filed in the office of the clerk of said court on or before said last named date unless the time shall be enlarged, and said complainants having appeared before this court asking that said time should be enlarged and having shown good cause therefor and the defendants having consented thereto:

It is ordered, that the time within which said complainants shall file the record on said appeal in the office of the clerk of the said Supreme Court be, and the same hereby is, enlarged so as to extend to and include the 15th day of December, A. D. 1902. Dated November 8th, 1902.

WM. LOCHREN, *Judge.*

(Endorsed: Order enlarging time to file return on appeal.) Filed November 8th, 1902. Henry D. Lang, clerk.

1421 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1902, Dec. 15th, 1902.

J. C. IVERSEN ET AL.
vs.
THE MINNESOTA MUTUAL LIFE INSURANCE Company *et al.* } C. Equity. No. 783.

On final hearing of said cause, counsel for complainants moves to strike from the record the depositions taken by the defendants at Chicago and Milwaukee on the ground that the whole of the testimony therein contained is incompetent, irrelevant and immaterial and not within the issues raised by the pleadings.

Counsel for complainants also moves to strike from the record the deposition of S. Herbert Wolfe on the ground that the testimony therein contained is irrelevant and immaterial.

Both of said motions were denied to which exception was taken and an exception allowed.

Counsel for complainants also gave notice that complainants did not waive any objections made to the admission of any of the testimony offered by defendants and insisted on all objections to any of such testimony made at the taking of the same.

Let the foregoing be made a part of the record in this cause.

CHARLES F. AMIDON, *Judge.*

1422 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable, the United States Supreme Court, that the foregoing, consisting of 1426 pages, numbered consecutively from I to IV inc. and 1 to 1422 inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul in the district of Minnesota, this 27th day of December A. D. 1902.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG, *Clerk.*

Endorsed on cover: File No. 18766. Minnesota C. C. U. S. Term No. 178. Samuel Wright and Esdras B. Trubey, appellants, *vs.* The Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, *et al.* Filed December 30, 1902. File No. 18766.

FILED
FEB 28 1904

Supreme Court of the United States.

BRIEF FOR APPELLANTS.

JULIUS A. GOETZ,

JOHN F. BYERS,

17045

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

SAMUEL WRIGHT and ESDRAS B. TRUBEY, substituted for J. C. IVERSON, *Plaintiffs,* **vs.** **THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY OF ST. PAUL, MINNESOTA, formerly The Bankers Life Association of Minnesota, and C. H. BIGELOW, JOHN B. SANBORN, MAURICE AUERBACH, CRAWFORD LIVINGSTON, KENNETH CLARK, ALBERT H. LINDEKE and J. F. R. FOSS, Trustees of the Minnesota Mutual Life Insurance Company of St. Paul, Minnesota, formerly the Bankers Life Association of Minnesota.** *Defendants.*	Appeal from the Circuit Court of the United States, for the District of Minnesota.

STATEMENT OF CASE.

On the 6th day of August, 1880, there was organized under the laws of the State of Minnesota, an association under the name of "The Bankers' Association," of Minnesota, for the purpose of securing employment for its members and pecuniary assistance to the families of its deceased members. (Rec., 526; Pr. Rec., 289.)

By amendment to the articles of association, its name was changed, in 1884, to "The Bankers' Life Association of Minnesota," and the employment feature was eliminated.

In 1892, the articles of the corporation were again amended. In these articles the object of the Association is stated to be (see Exh. C., Defts. Answer, Rec., 549-560; Pr. Rec., 301-306):

> "Article II. The general purpose of this corporation shall be to secure benevolent and fraternal co-operation between its members, and to the families of its deceased members and other designated beneficiaries pecuniary assistance."

The general plan for securing those objects is contained in the following articles of said Exhibit C:

Article III provides:

> "The general plan of its operation shall be to assess and collect from its members (so long as they continue such) and thereupon pay over to the families of its deceased members, or other designated beneficiaries, stipulated sums of money, to be secured to them by sufficient pledges of money which shall be kept invested meanwhile in United States Registered Bonds."

Article IV further provided:

> "Any male person not less than eighteen nor over fifty-five years of age (counting to his nearest birthday), approved by the medical director of this company, may be admitted to one membership therein upon his application therefor, and upon his depositing with, or to the credit of this company the following sums of money: First, as many dollars as he is years of age, (counting to his nearest birthday), as his deposit in the 'Guaranty Trust Fund' of the Association, which fund shall be a pledge to secure payments to be made by this Association for death of members, and shall belong to this Association. Second, a membership fee equal to half his guaranty deposit. Third, his proportion of the annual expense assessment for the company's current fiscal year."
>
> "Article V. An applicant may be admitted to as many as three memberships in this company, but in every such case, his payments shall be proportionately increased."

Article VI provided as follows:

"Each member of this corporation shall pay thereto, on the last secular day of September, in each year, an assessment equal to fifteen per cent. on his contribution to the 'Guaranty Trust Fund,' to meet the operating expenses, and to be known as his 'Annual Dues'; and upon the death of any member each surviving member shall also pay to said corporation, on demand, an assessment equal to two per cent. on his contribution to said 'Guaranty Trust Fund,' and out of the sum obtained from said last named assessment, which shall be known as the 'Mortuary Assessment,' there shall be paid to such beneficiary as is designated in the membership certificate, the sum of money in the said certificate named.

All assessments upon members of this corporation shall be apportioned among all members thereof pro rata, that is to say, in proportion to the amount that each member has paid into said Guaranty Trust Fund. All assessments due or to be paid to this corporation shall be paid to such officers or persons and at such places as the said Board of Trustees shall name and specify. In order to secure prompt payment of all losses occasioned by death of its members and to avoid unreasonable expense incident to the making and collection of assessments and to promote the convenience of all parties, said assessments need not be made on account of such death loss separately, but may be made at stated intervals as said Board of Trustees may direct, to provide for all or any death losses of said corporation that have taken place prior to the making of any such assessment, or assessments. Any assessment for the purpose of paying any death losses shall uniformally be two per cent. of each surviving member's contribution to said 'Guaranty Trust Fund' for each such death loss, and in case any such assessment shall produce a gross amount in excess of the amount needed to pay such death losses, then such excess may be used to discharge death losses subsequently occurring.

Section VIII. Any person, having once been a member of this company, may be readmitted, in the discre-

tion of the officers of this Association, upon his furnishing to them satisfactory evidence that he is in good health, and upon his paying to said Association all assessments, dues and other sums of money, which he would have been called upon to pay to this Association had he continued to be a member thereof."

Article X provided as follows:

"All amounts pledged to this company to secure payments of assessments occasioned by death of its members, shall be used only for that purpose, and meanwhile the same shall be and remain invested in United States Registered Bonds, and shall constitute and be known as 'The Guaranty Trust Fund.' Such bonds shall be made payable to this company and shall be transferrable or convertible only upon resolution of its Board of Trustees and such Board shall have the exclusive charge and control thereof.

All interest realized from such bonds shall meanwhile be used to defray the Company's operating expenses.

This article shall never be amended, or in any way at all changed, without the consent of every member of this Company, to be given in writing signed by him, and filed with the Company's Secretary, and reciting in full the proposed amendment or change."

Article XI provides, among other things, "that all losses occasioned by death of members shall be collected by this company from its members," and for a method of assessment for losses and collecting assessments, and also "in case of death or default on the part of any member to pay any of his assessments, the Association may use his deposit in the Guaranty Fund to pay death losses in such manner as it shall deem best and such use shall not work a payment of any assessment against the defaulting member."

Article XII provided that "upon the death of each member of this company, his family or designated beneficiary shall receive therefrom, a sum equal to two per cent. of the then subsisting "Guaranty Trust Fund" of this company, not

exceeding, however, two thousand dollars upon each full membership and one thousand dollars upon each half membership held by the deceased and in force at the time of his death and not exceeding six thousand dollars in any case."

Article XIV provided for the election of trustees and defined their powers and duties, and stated, among other things, their power.

> "Fifth, to amend these articles (except as therein otherwise provided) and to generally direct, manage, control the business and concerns of this company."

Article X, above set forth, was contained in the original Articles of Association and in all the amendments thereto in exactly the same form. Under these conditions, appellant Wright became a member of the Association on December 10, 1892, and appellant Trubey on March 13, 1893. Their membership certificates are substantially the same as Exhibit "B" of bill of complaint. (Rec., 50; Pr. Rec., 27.)

On December 24, 1898, the trustees of The Bankers' Life Association met and declared that they "intend to and do hereby amend the articles of incorporation of, and re-incorporate said The Bankers' Life Association of Minnesota." This amendment was made by striking out all of the articles of Exhibit C, except article X, and substituting others designed to allow the issuance of policies hereafter mentioned, and to divide the membeship of the company into classes having "special benefits, privileges, promises and requirements not prejudicial to other members." (Rec., 564 to 569; Pr. Rec., 308 to 311.) A code of by-laws was adopted at the same time, into which was injected, as article V thereof, the greater part of the former articles of incorporation, excepting, of course, article X. (Rec., 583-592; Pr. Rec., 318-322.)

Afterwards the officers of the Association began to issue what was called a "Guaranteed Option Policy," a copy of which is contained in the record (p. 57, *et seq.;* Pr. Rec., 31-37). This policy was in form like an "old line" or "legal reserve" policy, and contained provisions for the payment of a fixed premium, and, upon death, a definite sum of money, for loans, surrender values, extended insurance, paid up policy, the maintenance of a legal reserve, and for dividends. It was differentiated from legal reserve policies by a provision, that if by reason of unexpected losses and *expenses,* the amount paid in under the policy should be less than the required reserve, the deficiency might be charged as an indebtedness upon the policy, bearing interest at four per cent. until paid off by dividends or otherwise. Many, if not all, of these policies contained a further provision that "no personal liability to make any involuntary cash payment whatever, is incurred by holding a policy in this company. Any member is free at any time to cancel any past, present or future indebtedness to this company by surrendering this policy at the home office for cancellation." (Rec., 58; Pr. Rec., 31.)

Early in the year 1899 the Association ceased to solicit or secure any members on the original, or mortuary assessment plan, and confined its efforts to inducing members to change their membership certificates for a "Guaranteed Option Policy," and almost futile efforts to secure new policy holders. No new members on the mortuary assessment plan have been added to the Association since early in the year 1899. One of the inducements offered to members for making such change, was that a member should receive, as a credit on the premium to be paid for his new policy, a sum equal to his deposit in the "Guaranty Trust Fund,"

with interest. The method of making this credit is fully set forth on pages 217-218 of the record. (Pr. Rec., 120-121.)

On December 31, 1898, the Association had 12,090 full memberships, all on the mortuary assessment plan, representing $24,180,000 insurance. (Pr. Rec., 126; Rec., 228.) On July 31, 1901, there were still 2,188 memberships of that class in force, representing $4,376,000 of insurance (Rec., 232; Pr. Rec., 129), while about 3,800 persons holding nearly 5,500 memberships, representing about $11,000,000 of insurance, had been induced to exchange their certificates for "Guaranteed Option Policies." On December 31, 1901, the mortuary assessment membership had been further reduced to 1,417. (Rec., 233, 742-750; Pr. Rec., 130, 403-408.)

Article X, quoted above, at all times provided that the interest on the "Guaranty Trust Fund" should "meanwhile" be used for the expenses of management. In dealing with its funds the company created what was known as an "operating fund," out of which was paid the general expenses of management, and in this fund was placed interest from the "Guaranty Trust Fund," and all the expense assessments levied by the Association.

For many of the years of its existence there was a surplus in this fund, the interest and assessments above mentioned being in excess of the charges against it. In 1887 a special fund, known as a "contingent fund," was created, into which was carried the surplus from the "operating fund." This "contingent fund" was intended to be used to meet any contingent or extraordinary expenses of the Association.

When a member had been induced to exchange his mortuary assessment certificate for a "Guaranteed Option Policy,"

the credit agreed to be allowed him, equivalent, as above stated, to his contribution to the "Guaranty Trust Fund" and interest, was charged to this "contingent fund," and directly or indirectly carried to the "premium fund," so called, which fund included the reserve provided for in the "Guaranteed Option Policy," and also required by the statutes of Minnesota, referring to legal reserve companies. From December 31, 1898, to July 31, 1901, about $236,000 were so taken from the "contingent fund" and transferred to the "premium fund." (Rec., 221-223; Pr. Rec., 121-122.)

Appellant Wright refused to pay any more assessments after January, 1900, and demanded the cancellation of his "policy" and the return of his money. The defendant company treated him as having forfeited his membership, but refused to return any money. (Rec., 382; Pr. Rec., 215.)

On the 5th day of August, 1901, an annual meeting of the Association was held. At this meeting a resolution was in form adopted, as set forth in Exhibit E of defendant's answer (Rec., 595-603; Trans., 324-328), by which it was sought to reorganize the Association under the name of the Minnesota Mutual Life Insurance Company, as a legal reserve life insurance company, under chapter 175, Laws of Minnesota for 1895, as amended by Chap. 143 Gen'l Laws of Minnesota for 1901. The requirements of that statute were formally complied with, and all filings and executions of the different papers therein required were made and completed on the afternoon of the same day. (Rec., 678; Pr. Rec., 366.) In these articles of reorganization nothing is left of the original, or previously mentioned articles, except article X.

Article IX, of which reorganization articles states, that, "Article X of these articles, relates solely to a 'Guar-

anty Trust Fund,' heretofore created by the deposits of members who became such under the assessment plan," and is made to show the reason for the insertion of article X. (Rec., 595; Pr. Rec., 324.)

A notice of this meeting had been given in the usual form, but that notice contained no statement of any proposition to change any of the articles of incorporation. The body of the notice was as follows:

"NOTICE.

The annual meeting of the members of The Bankers Life Association of Minnesota will be held at the home office of the company in the St. Paul Fire and Marine Building in the City of St. Paul, State of Minnesota, on the fifth (5th) day of August, 1901, at ten o'clock in the forenoon, for the transaction of such business as may properly come before it. The By-Laws provide that members may vote in person or by proxy duly appointed in writing: but proxies must be registered with the Secretary at least five days before the meeting.

No individual not a member can be appointed as a proxy of any member.

Dated St. Paul, July 5th, 1901.

DOUGLAS PUTNAM,
Secretary."

(Rec., 320; Pr. Rec., 184.)

The vote upon the resolution showed that out of $15,501,-500 of insurance claimed to be in force at that date, $9,265,-000 was represented in person or by proxy, but of this large amount only $156,000 was represented in person, and upon the final vote on the articles of incorporation, votes were cast by the "board of trustees," as proxy, for nearly $9,000,-000 of this amount. (Rec., 670, 677, 678; Pr. Rec., 362.)

Chapter 175, Laws of Minnesota for 1895, is a codification of the General Insurance Laws of the state.

Section 2 of that act recited:

> "All insurance companies hereafter incorporated, or formed by authority of any general or special law of this state except * * * and corporations engaged in the transaction of life and casualty insurance upon the assessment plan, under the laws of this state, *may exercise the powers* and shall be subject to the duties and liabilities provided by this act.
>
> And the legislature may, for any cause, it being sufficient, annul or dissolve any such corporation, or revoke its charter, and may amend or repeal the laws affecting the powers and obligations of such corporations."

Section 3 provides that this act shall not interfere with corporations engaged in the transaction of life and casualty insurance upon the assessment plan under the laws of this state.

Section 63 of the same act, prior to its amendment, was as follows:

> "All corporations, associations, partnerships or individuals doing business in this state under any charter, compact, agreement, or statute of this, or any other state, except as provided in section three, involving the payment of money, or other things of value, to families or representatives of policy and certificate holders, or members, conditioned upon the continuance or cessation of human life, or involving an insurance guaranty, contract, or pledge for the payment of endowments, or annuities, shall be deemed to be life insurance companies, and shall not make any such insurance guaranty, contract, or pledge in this state, or to, or with, any citizen, or resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment and the consideration therefor, nor the performance of which is contingent upon the payment of assessments made upon survivors."

This general law was amended in several particulars by chapter 143, General Laws of Minnesota for 1901.

Section 21 was amended so as to read as follows:

"The general provisions of law relative to the powers, duties, and liabilities of corporations or their agents, shall apply to all incorporated insurance companies as far as the provisions are pertinent and not in conflict with the provisions of law relative to such companies or with their charters.

Any insurance company, not excepting companies transacting business on the mortuary assessment and stipulated premium plan, or either thereof, may qualify and be governed by this chapter, anything in its special charter to the contrary notwithstanding; provided, that nothing herein contained shall impair, or operate to impair, the obligation of any contract, and provided further, that after such qualification, the company qualifying shall be governed solely by this act; and, provided further, that nothing in this act contained shall apply to any town insurance, mortuary assessment, or stipulated premium company, unless and until it shall accept and qualify under the provisions hereof; and, provided further, that notice of the acceptance of said act be filed with the insurance commissioner."

Section 28, so far as it relates to the attempted reorganization of this company, was amended as follows:

"First—To organize a company the proposed incorporators must be residents of this state, and not less than ten in number, and shall subscribe and duly acknowledge before some officer authorized to take acknowledgments to deeds, articles of association, setting forth their intention to form a corporation; its proposed name, which must not so closely resemble the name of an existing corporation authorized to transact business in this state as to be likely to mislead the public, and must be approved by the insurance commissioner; the class of insurance it proposes to transact and on what business plan or principle; the place within this state of its location, or home office; and, if on the stock plan, the amount of its capital stock; also any additional suitable and lawful declarations or

matters the said incorporators may see fit to embody therein."

The procedure for *organizing or* reorganizing such incorporation shall be as follows:

"Second—Any domestic insurance company, not excepting those transacting life or casualty insurance business on the mortuary assessment plan and stipulated premium plan, or on either thereof, may at any time qualify and reincorporate under the provisions of this act, either as a stock company, if a stock company at the time of reincorporation, or as a mutual company, if a mutual company at the time of reincorporation, retaining or adopting any name consistent herewith and approved by the insurance commissioner.

To accomplish such reincorporation a resolution shall be adopted by a majority vote of all the votes cast by the stockholders of a stock company, or by a two-thirds vote of all the votes cast by the members of any other company, at any special meeting called for that purpose, of the holding of which not less that thirty days' written or printed notice, specifying the time and place, shall have been given, or by such majority vote or two-thirds vote as the case may be, at any regular meeting of such stockholders or members, authorizing and declaring such reincorporation, and setting forth the future corporate name of such company, which must not so closely resemble the name of an existing corporation authorized to transact business in this state as to be likely to mislead the public, and must be approved by the insurance commissioner; the class of insurance it proposes to transact, and on what business plan or principle; the place within this state of its location, or home office; and if on the stock plan, the amount of its capital stock; also any additional suitable and lawful declarations or matters the said voters may see fit to incorporate therein."

It is conceded that the purely formal requirements directed by the remainder of this section were duly complied with.

Section 63 of the Act of 1895 remained unchanged, except that the following proviso was added:

> "That nothing in this section contained shall apply to any contract, policy, or certificate of membership issued by any corporation or company while transacting the business of life insurance on the mortuary assessment plan and stipulated premium plan, or either thereof, prior to receiving authority to transact life insurance business under the provisions of this act, but such contracts, policies and certificates shall be fulfilled and carried out according to the terms and conditions of each thereof, subject to change by the parties thereto."

Upon these, and many other facts, a bill of complaint was filed by J. C. Iverson, and apepllant Wright, in the Circuit Court, above named, on the 10th day of October, 1901, against the parties named in the title to this action. This bill stated that the officers and trustees of the Association had fraudulently misused its funds; that the Association was insolvent; that the issue of the so-called "Guaranteed Option Policy" and the solicitation of members upon the mortuary assessment plan, to exchange their membership certificates for such policies, was a fraudulent invasion of the contract and charter rights of the members, and constituted an abandonment of the business for which the company was organized; that the attempted reorganization of August 5, 1901, was a breach of the contract rights of the appellants; that it was fraudulently conceived and carried out, did not comply with the law, and even if it did, the law authorizing such incorporation was and is unconstitutional and void, and praying that the Association be wound up and a receiver be appointed to properly distribute its assets among the parties entitled thereto. (Rec., 1, *et seq.;* Pr. Rec., 1, *et seq.*)

Defendants duly answered, denying any fraudulent acts or purposes on their part, and alleging that the acts of the trustees complained of were necessary and proper, owing to the condition of the Association and of the insurance business in general, and were, in fact, absolutely necessary to continue the life of the Association.

They admitted that they had made no efforts since January, 1899, to secure members on the "old morturary assessment plan," but that up to August 5, 1901, had solicited and secured members on the "Guaranteed Option Policy plan, and that all members of the Association had been advised of the wisdom of exchanging their mortuary assessment certificates for "Guaranteed Option Policies," and that many had made such exchange.

Paragraph XIV of the answer alleges laches on part of complainants, alleging that they knew of the amendments of the by-laws and the issuance of the "Guaranty Option Policy," and that many million dollars' worth of insurance had been issued and exchanged, and that they had taken no proper steps to prevent the same.

Prior to the trial of the action, the complainant Iverson withdrew from the case, and, upon motion, appellant Trubey was substituted in his place, and the action continued as above. (Rec., 117; Pr. Rec., 61.)

In due time the case was heard before the Hon. C. F. Amidon, who, on August 12, 1902, rendered a decision (Rec., 1397-1398; Pr. Rec., 743-748) to the effect that the charges of fraud and insolvency were wholly unsupported by the evidence; that appellant Wright had no standing in court, because he had elected to cancel his contract and demand back his money. Then, reaching the heart of the case, the court asks two questions:

First. Has the company departed from the fundamental law of its being in a manner forbidden either expressly, or by implication, by its articles of association?

Second. Has the company done anything to impair the vested rights of the holders of its certificates of insurance?"

And then proceeds at some length to answer both questions in the negative.

In the decision is made the radical assertion that the change in the business of the Association, outlined above, "relates solely to the manner of doing business; it is in no way a change of the essential character of the business upon which the corporation entered at the beginning."

Decree was entered upon the decision, dismissing the action. (Rec., 1399; Pr. Rec., 749.)

Complainants, regarding the questions of fraud and insolvency as of secondary importance, have appealed from the decree so entered, and have assigned the following errors upon which they intend to rely upon this appeal.

Assignment of Errors.

1st. The court below erred in not decreeing the statute of the State of Minnesota, viz., chapter 175 of the General Laws of the State of Minnesota for the year 1895, as amended by chapter 143 of the General Laws of the State of Minnesota for the year 1901, under which defendant Association reincorporated, and changed itself from a mortuary assessment association to a legal reserve life insurance company, unconstitutional and void.

2d. The court below erred in not decreeing the change made by the trustees of defendant Association, on January

1, 1899, and thereafter, by issuing the "Guaranteed Option Policy," transferring the members to a separate and distinct class, and ceasing to solicit members on the mortuary assessment plan, as being a departure from the original purpose of the Association, and as an impairment of the obligations of the contracts and rights of appellants and as being *ultra vires* and void.

3d. The court below erred in not decreeing the acts of the trustees of defendant Association, and persons to whom such "Guaranteed Option" Policies were issued, in changing, on August 5, 1901, and thereafter, the character and purpose of defendant Association from a mortuary assessment association to a legal reserve life insurance company, as being an impairment of the obligation of the contracts and rights of appellants, and as being a radical departure from the original purpose of the organization and *ultra vires* and void.

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ARGUMENT.

The Contract.

The contract made by each member of the Bankers' Life Association prior to the amendment of its articles of December 31, 1898, was uniform and mutual. No classes, or class distinctions were provided for or contemplated either in the charter, or by-laws of the Association. Each member in consideration of the pledges of his fellow-members, pledged himself that during his life he would pay, upon the death of any fellow-member, a fixed sum of money, and every other member was in like manner pledged to him. In earnest of the pledge, each member deposited in the treasury a certain sum of money, as security for the keeping of his promise. In case of his failure to pay upon any death, the amount agreed, the fund in which his pledge was placed could be drawn upon to make good his default, and that fund could be drawn upon for no other purpose. It was, of course, as in all insurance contracts, a necessary part thereof that sufficient membership should be secured, and that membership so distributed in respect to locality, as to secure practical uniformity in the average death rate of the Association. This, indeed, is the basis of all insurance. Under this contract, each member had a vital and pecuniary interest in the life and continuing membership of every other member. The loss of a member by death called for an immediate payment. The default of a member entailed a loss to all other members of the means by which their beneficiaries should be compensated for their deaths. There was a sum pledged to secure the members against default.

But to take the case of a man at forty years of age, his contribution of $40 under this plan, would pay his mortuary assessment two or three years at most, after his default, while if he paid for his lifetime, as he had agreed to do, his payments might reasonably be expected to continue for ten times that period. Taking away a member by causing him to cease payment of his assessment, was only a little less injurious to his fellow-members, than to take him away by death. The strength of the Association lay in its membership.

While, theoretically, the member was bound to the Association for life, and upon default could be compelled to pay his assessments by legal process, practically it would not be profitable to enforce that part of the contract. It was the less expensive course, to secure a new member to take the place of the defaulter, and accordingly liberal allowance for expense of management was made, and a board of trustees was created to operate the machinery to carry the contract into effect. This board was not the Association, although it seems that some of its members had a delusion to that effect. The board was the hand by which the Association was to work out its objects. The duties of the board were simply to secure an adequate membership, to make and collect assessments on proper occasions, to pay lossess occasioned by death, and to properly keep the funds entrusted to them; and failure on their part to faithfully perform these duties was a breach of the trust imposed on them. It was a necessary part of their duties to secure new members to take the place of those lost by death or default.

The Supreme Court of Minnesota, in considering the case of an assessment insurance association, where the trustees had attempted to put the older members into a class

by themselves (*Ebert* v. *Mut. Res. Fund. Life,* 81 Minn., 116-126), said:

> "Such a proceeding was in violation of the contract. The old members joined the association on the theory that it was to be a living institution—as old members dropped out or died, and are paid off, new members come in, younger in years; thus adding strength and keeping up the vitality of the association."

It would seem that this view of the contract should be binding on a Minnesota corporation.

Whatever may be said of the wisdom of the plan of this contract, there can be no criticism of its fairness. No fairer one was ever made. Its terms were clear and understood by every member, and even by the Trustees. The class of so-called insurance given was what the contracting parties desired. If other and more expensive plans were better than this, this was still the plan adopted as the one the members could afford to try to carry out, and the contract that was made in pursuance of that plan.

This contract might be broken in many ways, either by the members, or by the Association through its trustees, or by a majority of its members. Of these many possible violations of the contract, the assignments of error cover only the following:

1st. Making a change of the business of the Association from the one for which it was organized to another and different business.

2d. Adopting such a course of action as to prevent the securing of an adequate membership in the Association under the plan upon which the Association was organized.

3d. In adopting such a course of action as to necessarily reduce the membership secured on the plan under which the Association was organized.

4th. In diverting the funds of the Association secured under the operation of the plan of the Association, to another and inconsistent plan.

5th. By amending that article of the Association by indirect means, which it is provided could not be amended except by the consent in writing of every member.

6th. By abandoning the business for which the Association was organized.

The primary legal principal involved, is that no corporation has the right to change the business for which it was created so as to engage in another and different business without the consent of every member. We had supposed this to be elementary law.

In *Livingston* v. *Lynch*, 4 Johns., Ch. 573, which is perhaps the first case upon the point arising in this country, Chancelor Kent decided, following some earlier English cases, that the charter of a corporation was a contract between the corporation and its members and that neither the directors nor the majority of the members could bind a minority without their assent in any matter not expressly or impliedly authorized by the charter.

A later decision by Lord Eldon in *Baluseh* v. *Irving*, 2 Coop. t. Cott., 358, seems to be treated as a leading case in England on this point, and is to the same effect.

The English doctrine is clearly stated in *Pickering* v. *Stevenson*, L. R., 14 Eq. Cas., 322, as follows:

> "The principle of jurisprudence which I am asked here to apply, is that the governing body of a corporation cannot use the funds of the community for any purpose other than those for which they were contributed. By the governing body, I do not, of course mean exclusively the directors or a general council, but the ultimate authority within the society itself,

> which would ordinarily be a majority at a general meeting. According to the principle in question, the special powers given either to the directors, or a majority, by statute, or other documents of the Association, however absolute in terms, are always to be construed as subject to a paramount and inherent restriction that they are to be exercised in subjection to the special purpose of the original bond of the Association. This is not a mere canon of English municipal law, but a great and broad principle which must be taken in the absence of proof to the contrary, as a part of any given system of jurisprudence."

The same doctrine is well summarized in *Kean* v. *Johnson,* 9 N. J. Eq., 401-407.

> "They each contract with the other that their money shall be so employed. What the majority determine within the scope of this mutual contract they each agree to abide by, but there their mutual contract ends, and no majority however large, has the right to divert one cent of the joint capital to any purpose not consistent with and growing out of this original fundamental joint intention."

We can find no case in which the doctrine of these and the cases following them, has been overruled, or even criticized, except by the solitary case discovered by the defendants in that mine of curious legal precedents, the records of the so-called Supreme Court of New York, where it is said that one can find decisions on every possible side of every possible case, that of *Grove* v. *Erie,* etc., 53 N. Y. Supp., 628, where the court condemns the rule because of its inconvenience, saying, "consent of every member never could have been obtained in such an army of stockholders."

The inconvenience to which the court calls attention in that case is one of the means of protection to which every member is entitled upon entering a corporation. It forms a part of his contract.

Very many of the cases in which the same legal principle is laid down, as in the case of *Byrne* v. *Schuyler,* a Connecticut case reported in 28 L. R. A., 304, have arisen in cases of "attempted sale of the entire assets of the corporation, or of consolidation of the corporation with other corporations, and in all the cases the reason for the decision is the same, and that is, that the change, sale, or consolidation was of such a nature as to change the plan, or purpose of the organization in such a way as to constitute a breach of the contract under which the complainant, or complainants became members of the Association.

It cannot be necessary to cite all the cases bearing on this point. Their number is legion. The most important of them are cited and approved in the case of *Byrne* v. *Schuyler, &c.,* 65 Conn., 336, reported in 28 L. R. A., 304, pp. 307-309, is given a very full statement of our views of the law on this point.

The Change Resulting From the Attempted Re-incorporation.

If we have stated the law correctly, the next question to be considered is whether the so-called re-organization of the Banker's Life Association on Aug. 5, 1901, is a change in the business, plan, or object of that association, to a plan, or business, inconsistent with the one under which the complainants became members of the Association.

As has been seen, Chap. 175, Laws of Minn., for 1895, is a codification of the laws of the state, relating to all forms of insurance companies, and insurance, except what are locally known as, "Town Insurance Companies," and companies doing a life insurance business on the assessment plan, so, that by the statute, a broader distinction is made

between an ordinary life insurance company and an assessment company, than between such ordinary company and a fire insurance company.

Sec. 63 of the act, after defining life insurance companies, provides that such organizations "shall not make any such insurance guaranty, contracts, or pledge in this state, or to, or with, any citizen, or resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment, and the consideration thereof, nor the performance of which is contingent upon the payment of assessments made upon survivors."

It must surely be conceeded that as the act then stood, no company organized under said Chapter 175 could do the business for which the Bankers Life Association was organized, as shown by its articles of incorporation and by-laws. The amendments to this act as made by the laws of Minnesota 1901, chapter 143, so far as they refer to this branch of the subject are as follows:

> Sec. 21. "The general provisions of law relative to the powers, duties and liabilities of corporations, or their agents, shall apply to all incorporated insurance companies as far as the provisions are pertinent and not in conflict with the provisions of law relative to such companies, or with their charters.
>
> Any insurance company, not excepting companies transacting life, or casualty business on the mortuary assessment and stipulated premium plan, or either thereof, may qualify and be governed by this chapter, anything in its special charter to the contrary notwithstanding; provided, that nothing herein contained *shall impair, or operate to impair the obligations of any contract,* and provided further, that after such qualification, the company qualifying shall be governed solely by this act; and, provided further, that nothing in this act contained shall apply to any town insurance, mortuary assessment, or stipulated pre-

mium company, unless and until it shall accept and qualify under the provisions hereof; and, provided further that notice of the acceptance of said act be filed with the insurance commissioner."

Sec. 63. "All corporations, associations, partnership, or individuals doing business in this state under any charter, compact, agreement, or statute of this, or any other state, except as provided in section three, involving the payment of money, or other things of value to families, or representatives of policy and certificate holders, or members, conditioned upon the continuance or cessation of human life, or involving an insurance guaranty, contract, or pledge for the payment of endowments, or annuities, shall be deemed to be life insurance companies, and shall not make any such insurance guaranty, contract, or pledge in this state, or to, or with any citizen, or resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment and the consideration therefor, nor the performance of which is contingent upon the payment of assessments made upon survivors; provided, that nothing in this section contained shall apply to any contract, policy, or certificate of membership issued by any corporation, or company while transacting the business of life insurance on the mortuary assessment plan and stipulated premium plan, or either thereof, prior to receiving authority to transact life insurance business under the provisions of this act, but such contracts, policies, and certificates shall be fulfilled and carried out according to the terms and conditions of each thereof, subject to change by the parties thereto."

These two sections clearly operate to forbid the making by any company operating under the act, of any future contract, or policy of insurance on the assessment plan.

The legislature of Minnesota, by insisting, in Sec. 21 of the act that any company organized, or re-organized under the act "shall be governed solely by this act," and by leaving Sec. 63 unchanged, carefully stipulated that no more assessment business should be done, except, that the pro-

viso added to Sec. 63, by the amendment of 1901, pretends to provide that such contracts already made should be carried out.

The nature of the assessment insurance contract shows plainly the absurdity of this proviso.

From this law, which is the law on which the defendants rest, it is clear that whether legal reserve insurance is in fact a different business from assessment insurance, it is made so by the law of Minnesota. *It is the law that a company doing one kind of business is forbidden to do the other.* It makes them different and builds what was intended to be an impassable wall between them.

Independent of the statute, it is common knowledge that assessment and the so-called old time insurance, are not the same kind of business. To suggest anything of the kind to any officer, or agent, of a legal reserve company, would call down upon the head of the suggester a storm of indignant and voluble protest.

The two schemes of insurance here considered, are in conflict. In the one, there is an absolute dependence of each member upon every other member. He is obliged to pay in his money not for the benefit of his own policy, but for the benefit of the beneficiaries of such other member in case of his death.

In the other plan, he pays in his money for the support of his own policy. As was said by Judge Dyer in *Smith* v. *Assn.*, 24 Fed., 689, "the ordinary life policy rests on the promise of the company to pay the sum therein named. The policy holder in such a company is under no obligation to pay anything for the benefit of the holder of other policies."

If it can be said that both the Bankers Life Association and the Minnesota Mutual Life Insurance Company are mutual companies, it is a clear and sufficient answer that the mutuality in the first is one of contract and obligation, while in the latter, it exists only as to prospective profits.

The two plans are fundamentally opposed to each other, and are radically different by operation of law.

The Unconstitutionality of the Law of 1895 as Amended by Chapter 143 Laws of Minnesota, 1901.

As before stated the statutes of 1895, was amended by adding to Sec. 21 above quoted, the provision granting permission to any mortuary Assessment Company to reincorporate under this act provided that nothing herein contained shall impair, or operate to impair the obligation of any contract. The procedure for such re-organization was to be as follows:

> "To accomplish such re-incorporation a resolution shall be adopted by a majority vote of all the votes cast by the stockholders of a stock company, or by a two-thirds vote of all the votes cast by the members of any other company, at any special meeting called for that purpose, of the holding of which not less than thirty days written, or printed notice, specifying the time and place, shall have been given, or by such majority vote, or two-thirds' vote, as the case may be, at any regular meeting of such stockholders, or members, authorizing and declaring such reincorporation, and setting forth the future corporate name of such company, which must not so closely resemble the name of an existing corporation authorized to transact business in this state as to be likely to mislead the public, and must be approved by the insurance commissioner; the class of insurance it proposes to transact, and on what business plan or principle; the place within this state of its location, or home office; and, if on the stock plan, the amount of its capi-

> tal stock; also, any additional suitable and lawful declarations or matters the said incorporators may see fit to incorporate therein."

Reduced to its simplest terms, it permitted such reincorporation by a two-thirds vote of *all votes cast* at any special meeting called for that purpose, or by a similar vote at any regular meeting of the members.

Section 11, Article 1, of the Constitution of Minnesota, following Section 10 of Article 1 of the Constitution of the United States, provides that,

> "no bill of attainer *ex post facto* law, nor any law impairing the obligation of contracts shall ever be passed."

The court will, no doubt, have noticed that the provisions of the act cited in relation to the reorganization are permissive. They give internal evidence of being the work of an interested party acting through the legislature.

It is claimed by the appellants, that these provisions are not only contrary to the constitutional provisions of the State of Minnesota, and Federal Constitution, but that they are actually vicious. They in terms permit less than a majority of the members of a corporation like the Bankers' Life Association, to do what even a majority could not lawfully do. It ordinarily requires a majority of the membership, or of the stock of a corporation, to constitute a quorum of that corporation at its annual, or special, meetings, where votes of the stockholders, or members, are required to do business.

If, as might well be the case, in a corporation having numerous members, a bare majority of them are represented at the meeting, then by this law, two-thirds of that majority, or a little more than one-third of the membership, might make the contemplated change.

We shall not waste the time of the court by argument, or citation of authorities, to show that a law that would permit such a state of affairs is in violation of contract rights, and is unconstitutional and void.

If it is *not apparent* from the facts stated that this portion of the law of 1901, is vicious to the last degree, no argument can make it so.

It was urged in the court below, that the proviso attached to Sec. 63 obivated the charge that the statute was unconstitutional. If, as Section 63 of the amended statute provides, viz.:

> *"That nothing in this section contained shall apply to any contract, policy, or certificate of membership issued by any corporation or company, while transacting the business of life insurance on the mortuary assessment plan and stipulated premium plan, or either thereof, prior to receiving authority to transact life insurance business under the provisions of this act, but such contracts, policies, and certificates shall be fulfilled and carried out according to the terms and conditions of each thereof, subject to change by the parties thereto,"*

the former members, who bought the "Guaranteed Option Policy," are nevertheless liable for assessments, as provided by the charter of the company when appellants or either of them became members thereof, viz., Article VI:

> *"All assessments upon members of this company shall be apportioned among* ALL *the members thereof pro rata, that is to say, in proportion to the amount that each member has paid into the 'Guaranty Trust Fund.'"*

This contract with the mortuary certificate members cannot be kept without making the assessments on all members of the company, and enforcing the liability; therefore the company cannot keep its obligation to mortuary certificate members, as required by said Section 63 of the amended stat-

nte. Furthermore, the original statute, as above quoted, prohibits legal reserve companies from issuing any insurance contract the performance of which is contingent upon assessments made upon survivors, thus, in effect, declaring it to be the law of Minnesota that assessment companies cannot change from assessment companies to "legal reserve" companies without first dissolving the assessment companies.

The Fraudulent Character of the Reorganization of August 5, 1901.

Chapter 143, Laws of Minnesota for 1901, so far as it relates to re-incorporation, was permissive only. It was approved April 6, 1901.

Sec. 2 reads as follows:

> "This act shall take effect and be in force from and after the 1st day of July, 1901."

On the 5th day of July, 1901, the notice of the annual meeting of the Bankers Life Association of Minnesota was sent out, and on August 5th the meeting was held.

The by-laws adopted by the board of trustees in 1898, (Ex. D. of answer, Rec., 575; Pr. Rec., 314), in regard to meetings of the Association, read as follows:

> Article I. Annual Meeting—Special Meetings.
>
> Sec. 3. *Basis of Voting—Proxies.*—At any meeting of members, regular, or special, each member in good standing shall be entitled to one vote for each $1,000 of Insurance on his life, and a fractional vote at the same rate on fractional parts of $1,000 of such insurance. Any vote may be cast at any meeting for any purpose, either in person or by proxy duly appointed in writing. The proxy may be appointed in and by any application for any insurance or membership, or by any other proper writing signed by the mem-

ber. Voting by proxy shall be subject to the following rules:

(1) The proxy must be registered with the Secretary at least five days before the meeting at which it is offered.

(2) No individual not a member shall be appointed as the proxy of any member.

(3) Proxies shall remain operative until revoked by a notice in writing signed by the member and filed with the Secretary.

Insurance to the amount of $250,000 represented either in person or by proxy, or partly in person and partly by proxy, shall constitute a quorum of all annual and all special meetings of members."

It will be observed that the notice for this annual meeting contained no reference to any intended change of the company, but was an ordinary notice that any such Association would send out in the ordinary course of its business. (Rec., 806; Pr. Rec., 438.)

While it may be true that such an Association can at its regular annual meeting transact any business that could lawfully come before it, it could not be considered fair play on the part of the board of trustees, to take a step of such importance as was taken, without giving the members some chance to have a voice in the proceedings. The record of the meeting (Rec., 669-678; Pr. Rec., 362, 366) shows that it is a euphemism to call it a meeting of the members. Out of a little more than $15,000,000 of so-called insurance in force at that time, $9,265,000 was represented in person, or by proxy. The board of trustees had, and voted proxies representing $8,910,000 and Douglas Putnum, the secretary of the company, had and voted proxies to the amount of $147,000; Mr. Bigelow, the treasurer of the company had some more proxies, so that $156,000 only of insurance was represented in person, and quite a number of

these persons were connected with the management of the Association.

On the final vote on the adoption of the resolution of reorganization, persons representing $52,000 of the amount at first present at the meeting did not vote at all, so that of the total insurance in force, only about $100,000 was represented in person upon that vote.

It must be observed here that some of the members of this Board of Trustees were not members of the Association, and never had been (Rec., 240-242; Pr. Rec., 135-136) and that by the by-laws above quoted, and by the terms of the notice of the meeting, "no individual not a member shall be appointed as the proxy of any member."

There is some doubt in our minds whether under the rules, the non-membership of some of these trustees would not debar the board from voting these proxies, but there is no doubt of the impropriety of the Board of Trustees, as an entity, voting at a meting of the members of the Association.

We have found no authority on this point, but this case appears to offer a good opportunity for making one.

The defendants claim that nothing was done at the meeting that the actors therein had not the legal right to do. This cannot be true. The trustees were bound to use the greatest good faith in dealing with the affairs of the Association. They were the paid agents of the members. Can any one read the amendatory act, the notice for the meeting, the report of that meeting, and observe the speed with which the resolution of reorganization was accepted, and filed, as required by the statute, without being convinced that the defendant trustees had long before its consummation, concocted the plan for such reorganization; and fearing opposition, had so arranged matters, that the object of this

meeting should be concealed from the members, so that it might be in the control of the trustees themselves, and their friends; and had so arranged matters, that if any opposition to their plans should develop, the opponents would have to act very quickly to prevent the proposed corporation from becoming *de facto,* at least.

To re-state our contention, the reorganization of August 5, 1901, was and is void, because it violates the contract between the members of the Bankers Life Association of Minnesota, because it proposes to, and does abandon the business for which that Association was organized, because the law permitting such reorganization is, so far as it undertakes to permit such reorganization, contrary to the Constitution of the United States and of the State of Minnesota, and because even if the act is valid, there was not a compliance either in the letter, or spirit with the terms of the act.

The Violation of the Contract by the Issuing of the "Guaranteed Option Policy."

It has been seen that the adoption of the scheme for the issuance of this "Guaranteed Option Policy" was not the work of the Association, but of the trustees. (Ex. D, Deft.'s Answer, Rec., 564-9; Pr. Rec., 308-11.) The plan upon which the "Guaranteed Option Policy" was issued, is set forth on pages 217-224 of the record. (Pr. Rec., 119-123.) A copy of one of such policies, admitted to be in substance the form of policy so issued (paragraph 12, Deft.'s Answer), is set forth in Exhibit C of the bill of complaint. (Rec., 57; Pr. Rec., 31.)

By the terms of this policy the Association, in consideration of specific payments, agrees to pay ———— thousand dollars upon the death of the insured, subject to the "*advan-*

tages, privileges and *provisions* contained in the following pages."

The second clause in these special advantages was this, that "no personal liability to make any involuntary cash payment whatever is incurred by holding a policy in this company. Any member is free at any time to cancel any past, present, or future indebtedness to this company by surrendering this policy at the home office for cancellation."

Bearing in mind that the whole theory of assessment insurance rests upon the personal liability of the member to pay assessments, a person holding this policy was certainly not on the same footing as the one holding a mortuary assessment certificate. If it were possible to levy an assessment on him, there was nothing to bind him to pay it. But it is clear that no assessment could be made, since the only provision in the policy that is claimed to make this an assessment policy is the one that provides for the creation of a deficiency in the policy in case unexpected losses and expenses should reduce the amount of the reserve to the credit of the policy, to less than the computed required reserve. It is in evidence that no assessment was ever levied upon any holder of these so-called policies, notwithstanding that many deaths did occur between December 31, 1898, and July 31, 1901. (Rec., 319; Pr. Rec., 183.)

The contract of the mortuary assessment members provided (Defts. Ex. C, Sec. 6, Rec., 552; Pr. Rec., 302):

> "All assessments upon members of this corporation shall be apportioned among ALL the members thereof *pro rata*. That is to say, in proportion to the amount that *each member* has paid into the 'Guaranty Trust Fund.'"

It is admitted that after the issuance of these "Guaranteed Option Policies," no attempt was made to secure members on the mortuary assessment plan, and that the officers and trustees of the Association have solicited members already holding mortuary assessment certificates to exchange them for "Guaranteed Option Policies," and that about one-half of the certificate holders did, upon such solicitation, so exchange their certificates. That this exchange upon such a plan was a breach of the contract between the members, caused by the unlawful acts of the trustees, seems plain. The member exchanging intended to cut himself off from his assessment obligations. He was promised that no assessments should be made against him. His policy might be somewhat reduced under certain circumstances, but no cash payments could be exacted from him. The remaining mortuary assessment members were deprived of his support as effectually as if he had left the Association, and taken insurance in another company. If the trustees had endeavored to get new members on the co-operative assessment plan, it might have been less objectionable, but they proceeded to do their Association a double wrong in urging "the new plan," as they called it. Instead of taking in new members, as they were in duty bound, they encouraged desertion of the members already secured. They did even worse than this.

The Association, in pursuance of its legitimate business, had up to January 1, 1899, accumulated assets to the amount of about $900,000. The deposits of the members in pledge, known as the "Guaranty Trust Fund," had always been kept invested in government bonds, bearing interest as provided for by article X of defendant's Exhibit C. (Rec., 555; Pr. Rec., 304.)

The expense assessments, and the interest on these bonds, were capable of use to meet the expenses of management. The amount of these assessments and interest were, for the most of the years, more than sufficient to meet such expenses, and in 1887 a fund was created called the "contingent fund," which, as the secretary of the company says, was created "to receive interest." (Rec., 208; Pr. Rec., 114.) The surplus over the expense of management was at irregular intervals transferred to this fund, and while some interest was derived from other sources than the bonds in the "Guaranty Trust Fund," the testimony is clear enough that the amount in that "contingent fund" did not vary very much from the interest realized upon those bonds. (Rec., 208-210, 193-199; Pr. Rec., 114, 115, 104-108.)

It may be considered elementary law that where funds are contributed by different persons for a special object, they should be used for that object, so that the assessment of the members for expense of management should be the first funds devoted to that purpose.

It will scarcely be contended that the provision of Article X: "All interest realized from such bonds shall meanwhile be used to defray the company's operating expenses," is mandatory, or that "meanwhile" means forever.

The expense assessment being sufficient for expenses, the interest from a fund pledged to pay death losses in an Association whose primary object was the payment of such losses, not being required for this secondary purpose, should have been returned to the fund in order to carry out the primary purpose of the Association. During the years when the Association was honestly managed, some of it was so returned. The government bonds in which the fund was invested, at maturity, of course, were worth less than when purchased. Ac-

cordingly when such bonds did mature and were paid off, thereby making a loss to the "Guaranty Trust Fund," that loss was made good from the "contingent fund." (Rec., 215; Pr. Rec., 119.) This was right and proper. But when the trustees began to issue the "Guaranteed Option Policies," it was deemed necessary to offer some inducement to the members for making a change in their policies. In addition to freedom from assessments, they were offered a credit upon the fixed premium to be paid by them, on the Guaranteed Option Policies, of an amount equal to their pledges, deposited to secure payment of assessments against them, with interest. (Rec., 218; Pr. Rec., 120.)

The method of computing this interest was very curious. A member who had belonged to the Association for ten years, or less, was allowed his pledge and 10 per cent. thereof added for each year of his membership. If his membership had continued for more than ten years, he received in addition to the 10 per cent. interest for the first ten years, 5 per cent. interest for each additional year, which altogether was a much higher rate than could have been realized on the government bonds in which his pledge had been invested.

In passing, it may be noticed, that this inducement for making a change, was not so strong in the case of an older member, and perhaps the trustees did not want him so badly for the new plan.

It was necessary to provide for this credit, so that it was arranged that the amount thereof should be charged to the "contingent fund" and transferred in one way or another, to the "premium fund," where it should stand to the credit of the member. All this "premium fund" was made up from the contributions of members holding "Guaranteed Option Policies" or legal reserve policies. (Rec., 221-2-3; Pr. Rec., 122, 123.)

During the years 1899, 1900 and 1901, $236,100.78 were so transferred. (Rec., 223; Pr. Rec., 123.)

Appellants claim that since the "contingent fund" was largely, if not entirely, made up of interest on the "Guaranty Trust Fund," that had not been, or should not be, used for expenses of management except in case of absolute necessity, such transfers, in effect, took money from the "Guaranty Trust Fund" for purposes other than death losses, and that such use violated Article X of the contract made by them.

A trust fund, the interest of which absolutely belongs to someone else, is of little value to the *cestuis que trustent*, and no such theory as that of these trustees can be correct.

The solicitation of members to exchange their policies, and the transfer of funds as above stated, under the plan, was carried on continuously by the defendant trustees up to the time of bringing this action, and members numbering about 3,800 and holding about 5,500 certificates of membership (Rec., 232, 238; Pr. Rec., 129, 133-4), had changed their certificates for "Guaranteed Option Policies" and had received the credits allowed them, thereby making themselves parties to the breach of the contract. Other members, holding certificates to the amount of about $10,000,000 had failed or refused to pay further assessments of any kind, and were dropped from the rolls of the Association. So that members had been lost, more had been taken away, and no attempt had been made to add new members, the funds of the Association had been diverted from their original purpose, and Article X of the articles of the Association, had not only been amended, but practically abrogated by the so-called amendments of the articles of Association of December 31, 1898, which, by amending all the other original articles, left that one no base upon which to stand, and the insurance in

force had, by December 31, 1901, dwindled from $24,180,000 to $14,160,629.20 (Rec., 238; Pr. Rec., 134), including all the so-called "Guaranteed Option Policy" insurance.

The defendants, in the court below, claimed that this was still a "going concern," which may be conceded without conceding the invalidity of any of our objections to its continuing its course.

The power to amend the articles of incorporation, as was done, is claimed by the trustees under the provision in Article 14 of Defendants' Exhibit C, "to amend these articles (except as therein otherwise provided)." It must be conceded that this is a grant of broad powers, but to amend does not mean to abrogate, or destroy. Under such a power the trustees could no more pass a by-law impairing a contract made by the members than could the legislature. Their power to amend was confined to the scope and objects of the Association as originally organized. This is too self-evident to call for argument.

We think that there can be no doubt that the contract of appellants with the other members of the Bankers' Life Association, has been violated, and that the business for which that Association was organized has been abandoned, and that both of these wrongs are the result of unlawful acts of the defendant trustees and those other members of the Association who have joined with them in carrying out their unlawful plan and purposes.

The Defense.

The defense to the action may fairly be divided into five heads.

1st. The acts complained of, were lawful and not in violation of the contract.

2nd. The acts done were prompted by honest motives, the plan adopted was for the benefit of the members, and was called for by the necessities of the business, and that the insurance upon the new plan was better than that furnished by the old.

3rd. Laches on the part of appellants.

4th. That the appellant, Wright, has no standing in court, because he refused to pay assessments, and appellant, Trubey, similarly has no standing, because he did pay his assessments.

5th. The time-honored, but rather unsatisfactory defense, of "you're another."

The first defense is one upon the merits and has received careful attention.

The second of these defenses is immaterial, the question of the profitableness or unprofitableness of the contract was not for the trustees to determine. Their business was to carry out the contract as made by the principals, for whom they were only the agents. Their duties were not paternal but administrative. When the principals in the contract should determine that a change would be advisable, and should all consent to the change, then such a change could be made. The authorities cited above are in unison on this point, and among the multitude of cases in which it has arisen but one even apparent exception can be found, the case of *Supreme Lodge of K. of P's* v. *Knight,* cited by the defendants in the court below, an Indiana case reported in 20 N. E. Rep., 749. It, however, requires only a casual inspection of that case to see that it does not dispute the general principles stated, but bases the decision on the particular form of contract there considered.

The contract in the case at bar, might not have been the

wisest one that could have been made, but it is one in which the total cost of insurance, including expense of management, in the eighteen years of its continuance, did not much exceed the ordinary expense of management alone, in many of the so-called legal reserve insurance companies. (Rec., 717; Pr. Rec., 389.) In this respect, at least, no change seems desirable.

Further, it is a matter of opinion merely, as to whether the state of insurance business in the country at large, during the years in which the changes we complain of were carried out, called for any change.

The testimony of Mr. Temple, the president of the Bankers' Life Association, of Des Moines Iowa (Rec., 482-497; Pr. Rec., 266-272), shows that an Association built on the same lines as the Bankers' Life Association of Minnesota, and organized but a short time before the latter Association, went through all these years not only without loss of business, but with a very substantial increase in membership, and in assets for every one of those years, and with a membership covering a large portion of the United States, could not discover any necessity for any change either in the plan of operation, or in the character of the business itself.

Up to December 31, 1898, the Bankers' Life Association of Minnesota, had gone through nearly five years, following the panic of '93, of the most trying times in the country, for insurance business, and especially for its class of business, without substantial loss of membership (Rec., 704; Pr. Rec., 382), and for every year had made a substantial increase in its assets. (Rec., 384; Pr. Rec., 217.) Insurance had been paid when deaths had occurred, the cost to the remaining members was very low, and they were in the main satisfied with the conduct of the affairs of the com-

pany. They did not secure an investment, but they had secured temporary protection, and had saved money at a time when such saving frequently represented the narrow margin between solvency and bankruptcy.

There was considerable testimony introduced by the defendants, notably that of Mr. Wollf and Mr. Dearth, the insurance commissioner of the State of Minnesota, to show a falling off in assessment insurance caused by distrust in the plan of assessment insurance. This evidence seemed to complainants to be very immaterial, and the evidence of Mr. Dearth shows that while many so-called assessment companies, went out of business, and there was a loss of assessment insurance pure and simple in the years of 1898 to 1901, nevertheless, the assessment insurance proper, as included in both assessment and fraternal associations, had actually increased both in amount and in proportion to other classes of insurance during all those years (Rec., 837; Pr. Rec., 457), so that the distrust must have been, not of the plan of assessment insurance, but of the agents appointed to carry it out.

We should not have thought this portion of the defense entitled to consideration, if the court below had not devoted considerable attention to it. Its only merit rests upon the maxim that necessity knows no law.

The defense of laches is disposed of by the undisputed facts that the prompt action of the trustees following the meeting of August 5, 1901, precluded the obtaining of an injunction against the proposed reorganization before the scheme was carried into effect; and that this action was begun on October 10th, or barely sixty days after the wrong had been accomplished. There was as to this branch of the cause, no laches on the part of complainants.

The issuance of the "Guaranteed Option policies" as has been shown, was continued up to the date of bringing the action. The issuance of the latest one of those policies, was as much an injury to be complained of, as was the issuance of the first. The wrong was continuing and cumulative. Besides the members who accepted the exchange of certificates of membership in the Bankers Life Association for these "Guaranteed Option Policies," were partners in the wrong. As to those, no laches possibly could exist.

When the Bankers Life Association of Minnesota, ceased to levy assessments on *all of its members pro rata,* there was a clear violation of the contracts and rights of complainants, and the fundamental principle of the organization; and assessments thereafter made were not made in conformity with the laws of the association, and no member was obliged to pay them. (Bacon on Benefit Soc., Vol. 2, page 739, and cases cited.) And this is true even if the new method of assessment was more equitable than the old. (Niblack Benefit Soc., 2nd Ed., page 474.)

An association of this kind cannot declare a forfeiture of membership for failure to pay assessments unlawfully levied.

There should, perhaps, in this case, have been an assignment of error on the ruling of the court below that appellant Wright had no standing in this case, but that ruling is error, only if the trustees had not the right to continue to levy assessments after the change of plan and the acts done as the result of the issuance of the "Guaranteed Option Policies." If those acts were wrong, and not within the authority of the officers and trustees of the Association, the error of the court below is plain, and we hope will be so considered by the court.

Of course the demand of Wright that his money be returned, not having been complied with and nothing having been done in regard to it, it is simply absurd to deny him the privilege of changing his mind at any time before something prejudicial to the rights of others had resulted from his demand.

The defense raised on the alleged acts of appellant Trubey received no consideration in the court below, and is entitled to no considereration here.

The last defense was in no manner set up, or even suggested, in the pleadings, and would not be mentioned here but for the unnecessary remarks with which the court below concluded his opinion, and the fact that nearly one-third of the total cost of this action was made by the defendants in attemtping to show that one E. D. Carter was a bad man, and had instigated Wright and Trubey, and others, to bring this action. Even if the pleadings had set up this defense, we fail to see that it is in point. Prior to disbarment, the worst shyster lawyer in the country may bring a client into court and have his case heard on its merits. It is the case that should be heard, and not the story of the previous *alleged* villanies of the lawyer. A convict just out of the penitentiary may, solely for revenge, tell a respectable citizen where and how he can right a wrong done him, and urge the matter upon the citizen, but that fact has nothing to do with the determination of the case. We think that the defendants had no right to introduce this mass of testimony, and that the court was stepping down a long way in considering it, and a little further in his language concerning it.

The right of Trubey, at least, to bring the action, was

not questioned, and the case had already been decided upon the only points that the court, under the pleadings, was entitled to consider.

THE RELIEF.

It appears by the evidence, and the law, that the Bankers' Life Association of Minnesota has, by the wrongful action of its trustees, aided by a large number of its former members, abandoned its business, and that an illegal organization composed of those trustees, and some of those former members, has usurped the functions of the original Association and is holding its funds and diverting them from their proper contemplated use. The wrongful acts have reached such a stage, that an injunction against their continuance is not an adequate remedy. So much of the business of the original Association has been lost and diverted, that it would be impossible to restore it to its former condition, so that the only remedy that remains to the complainants and those they represent is, that a receiver shall be appointed to wind up the affairs of the Association and distribute its assets to those entitled thereto. The Association, being legally dead, should be legally buried.

We think this action is demanded not only by the law and the facts, but by every consideration of sound public policy. The undisputed facts in this case would have been held to authorize the dissolution of any partnership formed for the purpose for which the Association was formed, and we think there is abundant reason that more strictness should be required in relation to the faithful carrying out of contracts between the members of an Association like this,

than in the case of a partnership. The members of such an Association are usually widely scattered, and are at a great disadvantage in the matter of protecting their interests. Those interests are usually small, and it is common knowledge that if one, or two, bring an action against a corporation for their protection, that the claim will be raised that they are only "disgruntled members," and represent an insignificant minority not entitled to consideration. If a larger number combine, conspiracy is charged. The management of the Association, armed with proxies and protected by the money of the Association, is in a position to, and usually does, make the contest so expensive as to deter any but the most persistent and courageous from entering such a contest. Most members believing themselves wronged, sacrifice their interests and leave the field, feeling that the maxim, *ubi jus, ibi remedium,* is of little value, if the remedy is put beyond their reach. It would seem that the restrictions on the right of a corporation to violate a contract with its members should not be relaxed, and that the officers and trustees of such Association as the one at bar should be held to the strictest accountability in carrying out the plans and purposes of the Association.

The judgment of the court below is not justified by the facts, is contrary to the law, and we think is thoroughly vicious in principle and should be reversed.

Respectfully submitted,

DILLON & GOETZ,
Solicitors for Appellants.

JOHN F. BYERS,
Of Counsel.

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Office Supreme Court U. S.
FILED
MAR 10 1904
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 178.

SAMUEL WRIGHT ET AL., *Appellants*,

vs.

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY ET AL.

APPENDIX TO BRIEF OF APPELLANTS.

STATUTES OF MINNESOTA.

CHAPTER 76.

ACTIONS RESPECTING CORPORATIONS.

SEC. 5889. This chapter embraces all corporations, including in such designation all associations having any corporate rights, whether created by special acts or under general laws.

(G. S. 1866, c. 76, sec. 1; G. S. 1878, c. 76, sec. 1.)

SEC. 5892. Actions may be commenced against corporations, whether created under the laws of this State, or any other State or country, except as otherwise expressly provided, in the same manner as other civil actions; and where

service of summons is made according to the statute, the plaintiff may proceed thereupon in the same manner as in civil actions against natural persons.

(G. S. 1866, c. 76, sec. 4; G. S. 1878, c. 76, sec. 4.)

SEC. 5900. Wherever any corporation having banking powers, or the power to make loans on pledges or deposits, or authorized by law to make insurances, becomes insolvent, or unable to pay its debts, or neglects or refuses to pay its notes or evidences of debt on demand, or violates any of the provisions of its act or acts of incorporation, or of any other law binding on such corporation, the district court may, by injunction, restrain such corporation and its officers from exercising any of its corporate rights, privileges and franchises, and from collecting or receiving any debts or demands, and from paying out, or in any way transferring or delivering, to any person, any of the moneys, property or effects of such corporation, until such court shall otherwise order.

(G. S. 1866, c. 76, sec. 12; G. S. 1878, c. 76, sec. 12.)

(A corporation organized under Laws 1885, c. 184, engaged in the business of life or endowment or casualty insurance on the co-operative or assessment plan may be proceeded against under this section. State *v.* Educational Endowment Ass'n of Minneapolis, 49 Minn., 158; 51 N. W. Rep., 908.)

SEC. 5901. Such injunction may be issued on the complaint of the attorney general, in behalf of the State, or on the complaint of any creditor or stockholder of such corporation. Whenever such injunction issues against any bank for any violation of its charter, on the complaint of any creditor, the court shall proceed to final judgment in such case, and adjudge a forfeiture, if the proof is sufficient, notwithstanding such creditor may settle with such corporation, and relinquish his claim against said corporation; and

in all such cases, the attorney general, or any creditor, shall have the right to appear and prosecute such action; and such action shall not be discontinued, if either of them so appear and prosecute the same.

(G. S. 1866, c. 76, sec. 13; G. S. 1878, c. 76, sec. 13.)

SEC. 5902. The court, in any stage of the proceedings, may appoint one or more receivers to take charge of the property and effects of such corporation, and to collect, sue for and recover the debts and demands that are due, and the property that belongs to such corporation, who shall in all respects be subject to the control of the court.

(G. S. 1866, c. 76, sec. 14; G. S. 1878, c. 76, sec. 14.)

LAWS OF MINNESOTA FOR 1885.

CHAPTER 184.

SEC. 6. Any corporation, association or society which issues any certificate, policy or other evidence of interest to, or makes any promise or agreement with, its members whereby upon the sickness or other physical disability of a member, or by reason of having attained a certain age, any money or other benefit, charity, relief or aid is to be paid, provided or rendered by such corporation, association or society, to such member or beneficiary designated by him, which money, benefit, charity, relief or aid are derived from voluntary donations or from admission fees, dues and assessments, or any of them, collected or to be collected from the members thereof, or members of a class therein, and interest and accretions thereon; and wherein the paying, rendering or providing of such money or other benefit, charity, relief or aid is conditioned upon the same being realized in the manner aforesaid, and wherein the money or other benefit, charity relief or aid is applied to the uses and purposes of such corporations, association or society, and the expenses of the

management and prosecution of its business, shall be deemed to be engaged in the business of casualty insurance upon the co-operative or assessment plan, and shall be subject only to the provisions of this act.

SEC. 15. * * * All associations, societies, companies, corporations or organizations now transacting, or hereafter desiring to transact the business of life, endowment or casualty insurance in this State, upon any other plan than that defined in and by sections five (5) and six (6) of this act, shall comply with all the provisions of the general life and health insurance laws.

FILE COPY.

1707

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 175.

The Supreme Court U. S.
FILED
MAR 7 1904
JAMES H. McKENNEY,
Clerk.

SAMUEL WRIGHT AND EDWARD B. TAINTER,

Appellants,

vs.

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY, ET AL.,

Appellees.

BRIEF FOR APPELLEES.

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JARED HOW,
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TIMOTHY R. PALMER,
Of Counsel.

17071

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 178.

SAMUEL WRIGHT AND ESDRAS B. TRUBEY,

Appellants.

vs.

THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY, ET AL.,

Appellees.

BRIEF FOR APPELLEES.

STATEMENT OF FACTS.

For convenience in arrangement the facts will be stated under three heads, viz.: I. The History of the Company. II. The History of plaintiff's connection therewith. III. The history of this litigation. The assignments of error (R. P. 757) indicate that appellants' principal grounds of complaint are a change in the Company's manner of doing business, made on or about January 1st, 1899, and a further change made on or about August 5,

1901. The history of the Company, therefore, naturally falls into three periods, 1. The First Period, from the time plaintiffs became members down to January 1st, 1899, the time of the first change complained of. 2. The Second Period, from January 1st, 1899, down to August 5th, 1901, the date of the second change complained of, and 3. The Third Period, from August 5, 1901, until the present time.

I.

The History of the Company.

1. *The First Period.*

The defendant corporation was organized in 1880 under the laws of the State of Minnesota. The statute under which the Company operated prior to August 5, 1901, is Chapter 184 of the General Laws of Minnesota for the year 1885. The Company accepted the provisions of this act on November 28, 1890 (Exhibit B. Rec. p. 294). So much of this act as is material is printed in the appendix to this brief. As the appellant Wright became a member on December 10, 1892 (Rec. p. 207-8), and the appellant Trubey on March 13, 1893, (Rec. p. 255), it is not necessary to consider any transactions nor the provisions of any articles or by-laws in force prior to the earliest of those dates. On November 21, 1892, prior to the time either of the appellants became members, the Company, then called the Bankers Life Association, adopted amended Articles (Exhibit "C," Rec. p. 301). These articles with some

unimportant amendments were in force until December 24, 1898.

The character of the corporation at the time appellants became members is fully disclosed by this Exhibit "C," and the statute referred to.

It was a cooperative assessment life insurance Company, the general plan of its operation being "to assess and collect from its members and thereupon pay over to the families of its deceased members, or other designated beneficiaries, stipulated sums of money."

By Article IV each member, on becoming such, was required to pay the following sums of money: "First, as many dollars as he is years of age (counting to his nearest birthday) as his deposit in the guaranty trust fund of the association, which fund shall be a pledge to secure payments to be made by this association for death of members, and shall belong to the association; Second, a membership fee equal to half his guaranty deposit. Third, his proportion of the annual expense assessment for the Company's current fiscal year."

By Article VI it was provided that "each member of this corporation shall pay thereto on the last secular day of September in each year, an assessment equal to fifteen per cent on his contribution to the guaranty trust fund to meet the operating expenses, and to be known as his annual dues, and upon the death of any member each surviving member shall also pay to said corporation, on demand, an assessment equal to two per cent on his contribution to said guaranty trust fund, and out of the sum

obtained from said last named assessment, which shall be known as the mortuary assessment, there shall be paid to such beneficiary as is designated in the membership certificate the sum of money in the said certificate named." It further provides that if the assessments shall produce an amount in excess of the amount necessary to pay death losses, such excess may be used to pay death losses subsequently accruing, "provided that the board of trustees may in their discretion retain in such mortuary fund such amount as will in their judgment most increase the efficiency of the corporation and secure the prompt payment of death losses."

Article VII provided "all membership fees and annual dues shall be used to defray the current expenses and to increase its efficiency and protective capacity, and the residue thereof, if any, may be used to pay death losses."

Article X was as follows: "All amounts pledged to this company to secure payment of assessments occasioned by death of its members, shall be used only for that purpose, and meanwhile the same shall be and remain invested in United States registered bonds, and shall constitute and be known as the 'guaranty trust fund.' Such bonds shall be made payable to this company, and shall be transferable or convertible only upon resolution of its board of trustees, and such board shall have the exclusive charge and control thereof.

All interest realized from such bonds shall meanwhile be used to defray the company's operating expenses.

This article shall never be amended, or in any way at all changed, without the consent of every member of this company, to be given in writing signed by him, and filed with the company's secretary, and reciting in full the proposed amendment or change."

Article XII provided that upon the death of a member his beneficiary shall receive "a sum equal to two per cent of the then subsisting guaranty trust fund, not exceeding however two thousand dollars upon each full membership."

Article XIII provided that "the annual dues of each member shall be paid to this company, at its office in St. Paul in the State of Minnesota (or at the proper depository for it) on or before the last secular day of September in each year and *without demand therefor.*"

Article XIV placed the governing power in the hands of a board of five trustees elected by its members.

Among the enumerated powers of this board are "to establish by-laws and make all rules and regulations deemed by them expedient for the management of the affairs of this company in accordance with law and not incompatible with an honest purpose," and also "*to amend these articles (except as therein otherwise provided) and to generally direct, manage and control the business and concerns of this company.*"

The only provision in the articles against amendment by the trustees is in Article X above quoted.

The form of the membership certificates issued

by the Company under these articles, known as "Mortuary Assessment Certificates" is found in complainants' exhibits "H" and "I" (Rec. p. 207-8, 390).

The funds of the company were carried on its books under various heads. These were

First the "Guaranty Trust Fund." This consisted of the deposits made by members on their becoming such, as provided by Articles IV and X of the Articles of Association (Exhibit "C" Rec. p. 301, 304). As a matter of bookkeeping merely this fund was carried under two divisions, 1st, The Guaranty Trust Fund proper, in which was included the deposits of all members who had not lapsed or deceased, and 2nd, The so-called Mortuary Reserve Fund under which was included the deposits of deceased and lapsed members (R. p. 104-5, 393 4). These two divisions were always treated as one fund, and put to the same use (R. p. 397-8).

No part of the Guaranty Trust Fund, (including the so-called Mortuary Reserve Fund) has ever been used or applied to any purpose other than the payment of death losses among the holders of mortuary assessment certificates, (R. p. 109-10, 112, 422-3).

Second. The "Mortuary Fund" made up of the proceeds of mortuary assessments and transfers from the Guaranty Trust Fund (R. p. 108-9). Against this fund was charged only the amount of death losses paid.

Third. "The Operating Fund" made up of membership fees, annual dues, and interest on Guaranty Trust Fund government bonds (R. p. 105). Against this fund were charged the operating expenses and portions of it remaining at the close of the fiscal year were transferred to the contingent fund under that provision of the charter in Art. VII providng that after paying operating expenses the balance of membership fees and annual dues should be used to promote the efficiency of the Company.

Fourth: The "Contingent Fund" made up of miscellaneous interest receipts (R. p. 115), and the transfer of balances from the operating fund. Against this fund was charged depreciation of Guaranty Trust Fund securities and miscellaneous expenses.

During the year 1898 it became apparent to the officers and trustees that in order to put the Company on a permanent and stable basis a change in the manner of doing business must be made. The Company was making no headway, the average age of its members and the death rate were increasing, and no growth was shown in the amount of business. The conditions which made this change essential were those common to all cooperative assessment companies. A substantial increase in the assessments was inevitable. The experience of assessment companies had shown that when this stage was reached and the increasing average age and death rate brought about increasing assessments, the younger members would drop out, leaving behind the older

members and impaired risks, and the assessments on the other members would become too burdensome, and members who had been paying for years would finally be left without insurance. The history of assessment insurance in this country is a history of failures. The story is told in the testimony of Mr. S. Herbert Wolfe, (Rec. P. 474-503) one of the leading actuaries of the country and in that of Mr. Dearth, Insurance Commissioner of Minnesota, (Rec. p. 440-461). The reason for this is stated by Mr. Dearth as follows:

"My observation and knowledge acquired from the investigation of these companies and through the results shown by their sworn annual statements filed with the insurance department, show that the plan of assessment insurance whereby simply sufficient amounts are collected from the members to meet the current mortality cost, as the same accrues, finally results,—universally—in placing the companies in a financially embarrassed position; for the reason that as the average age of the policy holders or members increases the liability for death—in other words the mortality cost increases at such a rapid rate that it necessitates very heavy additional assessments levied as to result in the retirement from the membership of the younger ages who are in good health, and can secure reliable insurance in old line or legal reserve companies, leaving only those who have either reached the prohibitive age limit or are uninsurable owing to ill health, unduly increasing the mortality cost, rendering it practically impossible for those remaining to meet their un-

due heavy assessment obligations, and as a consequence the company inevitably goes to the wall financially." (Rec. p. 446.)

Mr. Wolfe says: "The natural operation of the laws of mortality the fact that assessment associations are less stable and less reliable than legal reserve companies, and the fact that when the premiums are advanced those insured who are in good insurable health drop their policies and go into level premium companies leaving a class of risks which unduly increase the mortality cost of the association." (Rec. p. 492, 500.)

That was exactly the condition which confronted this company in 1898. Mr. Palmer, the president of the company, says (Rec. p. 382):

"For several years prior to 1898 the records of the company and its experience disclosed the fact that the mortality rate was rapidly increasing, while the aggregate amount of insurance in force was not materially increasing, but in fact in some years was decreasing, and that the average age of the members was gradually increasing, although the best efforts which its officers could put forth to secure new business were put forth; and it was apparent that there would be an increase in the number of assessments which would be necessary to care for the death losses in the future. Moreover insurance journals throughout the country were constantly and bitterly attacking the plan of assessment insurance. The insurance departments of the several states were very much opposed to assessment insurance, and in their annual reports almost without exception referred to

assessment insurance as not feasible; and a large number of assessment insurance companies had failed, and were failing from year to year, until assessment insurance was made exceedingly unpopular in the minds of the public, and very unsafe. Some of the legislatures adopted legislation hostile to assessment companies. In the State of Massachusetts the writing of assessment insurance was prohibited by the legislature."

The data given in the record sustain these several statements (Rec. p. 382). In 1892 the total amount of insurance in force in defendant company was $25,404,000. By 1894 it had fallen to $23,486,000. In 1895 there was a slight increase to $24,626 000, but by December 31, 1898, it had fallen to $24,180,000. The company's new business was unable to keep pace with the tremendous lapse, and it must be remembered that the lapse is always among the *young members and desirable risks.* Furthermore (Rec. p. 389) in 1892 with a total insurance of $25,404,000 the number of certificates ceased by death was 75. In 1893 with a total insurance of 23,678,000 the number of certificates ceased by death was 114. In 1898 with a total insurance of $24,180,000 the number of certificates ceased by death was 143. The mortality was therefore increasing at a tremendous rate.

It is not necessary to discuss these conditions further. It conclusively appears that a continuation of the company's method of doing business could only have one result. The fault did not lie with the corporation. The trouble was with the

membership who would not do their part (Rec. p. 391). If required to pay the cost of their insurance the younger members would drop out, and the older members would be unable or refuse to pay the increased assessments. The mortuary assessments would not produce enough to pay death losses, and the Guaranty Trust Fund would be drawn on until it fell below $100,000, so that 2 per cent of it (the amount which the company was obligated to pay to the beneficiaries of deceased members) would be less than $2,000. This fund would soon be wiped out entirely, and the beneficiaries of the members remaining would receive little or nothing.

2. *Second Period.*

It was therefore necessary to induce the membership, before it was too late, to consent to immediately place their insurance on a basis where they would be paying at once the cost of their insurance, and place it on a sound and permanent basis. Accordingly on December 24, 1898, the board of trustees, pursuant to the power of amendment vested in them by the Company's charter, adopted amended articles of association, and a set of by-laws, still under the provisions of chapter 184 of the laws of Minnesota 1885. The amended articles are set forth as defendant's exhibit "D" (Rec. p. 308), and the by-laws immediately following (Rec. p. 313). An examination of these articles shows that the character of the Company as an *assessment* company was unchanged. By Section III it was provided that "payments in

advance at stated times of specified premiums or assessments may be provided for, but the insured's liability to contribute to the payment of policy claims or death losses shall not be limited to a fixed sum." The articles are very general in terms and contemplate that the exact manner of transacting its business shall be provided for in the by-laws.

Article VIII provided that the annual meetings of the members shall be held at such times and places as the by-laws shall provide.

Article IX provided that the "*by-laws shall contain provisions which shall operate to preserve, continue, guard and protect all of the existing rights and privileges of, and promises and pledges to, persons who are members of this association at the time of the taking effect of these amended articles and articles of reincorporation*, and to preserve, continue and enforce all of the present duties, obligations and promises and agreements of said members to the association, except in so far and in such respects as the necessity or the general good and welfare of the membership of the association as a whole shall require changes in or relinquishment of the same."

Article X continued in force unchanged the article X of the former charter relating to the inviolability of the Guaranty Trust Fund.

Article XI continued in force the former provision authorizing the amendment of the articles, and authorized the trustees to make by-laws.

The by-laws passed pursuant to these articles divided the membership into classes. "Class A" consisted of all members who became such or applied

for membership prior to January 1, 1899, together with the members who thereafter applied for membership, upon substantially the same terms and conditions, and who received certificates substantially the same in form and substance as those who became members prior to the first day of January, 1899" (Art. V). All members to whom should be issued other forms of policies constituted one or more additional classes (Art. IV).

It was also provided (Art. V., Rec. p. 318) that "any member of Class A shall at all times be entitled to exchange his certificate or certificates of membership policy or policies for any other form of policy then being issued by this Company, upon such just and equitable terms and conditions as the board of trustees shall from time to time prescribe." It appears that all the provisions of the articles of 1892 relating to the mortuary assessment certificates, and the manner of levying assessments, &c., are incorporated into these by-laws.

Article I fixed the date of the annual meeting as the first Monday in August at the home office in St. Paul. Shortly after these articles went into effect the solicitation of new business on the mortuary assessment certificate plan was discontinued, and no new business on that plan has been solicited since March 1899. From that time on until 1901 the efforts of the Company were mainly directed to "transferring" members. That is, to soliciting members to surrender their mortuary assessment certificates and accept in lieu thereof the new forms of policy called the "Guaranteed Option Policy"

(Rec. p. 409-411). The writing of new business commenced again in 1901 (Rec. p. 174). Some of the forms of the so-called "Guaranteed Option Policies" issued to transferring members and new members since January 1st, 1899, are in the record (Complainants' Exhibit "C", Rec. p. 31), (Complainants' Exhibit "D", Rec. p. 189). These policies required the payment by the insured of a stipulated annual premium in advance. The premium rates were based on the Experience Tables of Mortality, and were almost but not quite the rate which would have been charged if the Company had been on an "old line" or legal reserve basis (Rec. p. 512), and in other respects these policies greatly resemble policies issued by legal reserve companies. For example, in complainants' Exhibit C (Rec. p. 31 it appears that Mr. Newkirk, age 46, was charged an annual premium of $32.50 per thousand, on what was substantially a whole life policy after the first year, on a 4 per cent basis. The net premium rate (Combined Experience Table) on a 4 per cent basis, age 46, is $30.08 per thousand (Rec. p. 485 6, 512). The net premium does not include the "expense loading" (Rec. p. 486), so that Newkirk's expense loading was only $2.23 per thousand or 7 per cent of the net premium rate. (Figured according to the American experience tables it would be 13 per cent Rec. p. 512), while the usual expense loading is from 15 per cent to 35 per cent. So that these rates were substantially the same as "old line" rates, except that the expense loading was more moderate. But in the tenth paragraph of the policy Exhibit D (Rec.

p. 192) is found the following clause:

"The company agrees to hold for this policy, and each similar policy, the full reserve computed as below provided, according to the combined experience table of mortality, on the basis of four per cent compound interest, provided however that if the funds derived from such policies shall be reduced below the amount of said reserve *the company may require the insured under this and each similar policy to pay his just proportion of the deficiency within sixty days after written request therefor; or at the option of the company such proportion with compound interest thereon at the rate of 4 per cent per annum may be charged as a lien against the policy and any sum which shall become payable thereunder.*

And in the other policy (Comp. Ex. C., Rec. p. 31) in the eleventh paragraph (Rec. p. 34) is found a similar agreement to maintain a reserve, with the proviso that "if unexpected losses and expenses shall be found to have reduced the funds derived from such policies below the amount of said reserve, the company shall have the right to apportion the deficiency ratably against this and each similar policy, in proportion to its reserve, and the amount so apportioned against each policy shall be an indebtedness thereon, bearing interest at 4 per cent per annum until paid off by dividends or otherwise."

And in paragraph nineteenth "The present and future articles of incorporation and by-laws of this company are hereby made a part of this policy."

At the close of the year 1898 the amount of insur-

ance in force, all on the mortuary assessment certificate plan, was $24,180,000 (Rec. p. 382). By December 31, 1899 the amount of insurance in force on the "Guaranteed Option Policy" plan upon the lives of members who had formerly held mortuary assessment certificates, that is the amount of insurance in force held by "transferred" members, was $3,859,500. By December 31, 1900, it was $9,142,000. By July 31, 1901, it was $11,001,500 (Rec. p. 398).

On July 31, 1901, the total amount of insurance in force on the mortuary assessment certificate plan was $4,376,000, and was being rapidly reduced by transfers (Rec. p. 408).

The total amount of insurance in force July 31, 1901, on the "Guaranteed Option Policy" plan was $11,125,000. Of this $123,500 was new business, and the rest (Rec. p. 398) transfers, so that between December 31, 1898, and July 31, 1901, there had been transferred more than $11,001,500 of insurance (these figures for 1901 show merely the amount of transfers then in force; some of the transferred members had of course lapsed or deceased), while the total amount of mortuary assessment certificate insurance was reduced by transfers, *lapses* and *deaths* from $24,180,000 on December 31, 1898, to $4,376,000 on July 31, 1901 (Rec. p. 408, p. 382, 398).

The total amount of insurance in force, of all kinds, dropped from $24,180,000 on December 31, 1898, to $15,501,000 on July 31, 1901, a net shrinkage of $9,679,000. An effort was made by com-

plainants to show that the system of transferring caused this large lapse. The evidence is conclusive however, that this was not the cause. Undoubtedly the change of plan inaugurated by the Company made some members uneasy, and caused them to drop out. But the record shows (p. 382) that during the years 1894-5-6-7-8, *prior to any change of plan*, the lapses amounted to an average of over $3,400,000 per year. During those years the writing of such new business as the Company could get helped to offset this lapse. But during the years 1899, 1900 and 1901, the Company was compelled to devote its attention mainly to transferring members, consequently if this lapse of former years had continued in the same proportion it would have amounted between December 31, 1898, and July 31, 1901, to more than $10,000,000, which would alone account for the net loss in amount of insurance in force. Furthermore, the record shows that the literature distributed and attacks made on the company by the very persons back of this litigation undoubtedly increased the amount of lapses (Rec. p. 395-6), a subject which will be referred to more at length hereafter.

To return to the transfers.

Every member was given an opportunity to transfer on uniform terms, varying of course in each case according to the age of the respective members, and the length of time they had been members (Rec. p. 386, 387). The old members were given the same rates in proportion to their age as the young. The

members were all informed that it was for the best interests of the Company that the transfers should be made, but they were also informed that if they desired to retain their old certificates they could do so, and their contracts would be carried out by the company, (Rec. p. 387, 388). The position of the company on this point is clearly shown by the circular sent to all the members holding mortuary assessment certificates (Rec. p. 388, Dfts. Exh. 44 Rec. p. 465-6). Members have always been and still are permitted to transfer at pleasure (Rec. p. 386). No discrimination of any kind was made, old and young were solicited alike (Rec. p. 385-6). No medical examination was required. The attempt of the complainants to show that the efforts of the company were directed to transferring the desirable risks, with the object of leaving the older and impaired risks behind failed. On the contrary a special plan was adopted to help the older members to make the transfer (Rec. p. 386). The manner in which these transfers were made is set forth in Mr. Palmer's testimony (Rec. p. 384 388). The original plan is shown in the record (Rec. p. 120-121). This plan was modified (Rec. p. 121). The form of policy adopted at first required the transferring member to pay a premium based on his attained age at the date of his transfer. This rate of course was a large increase over the amount the member had theretofore been paying on his mortuary assessment certificate and especially so in the case of the older members. In order to make the burden as light as possible, under the actuaries' advice, a credit was allowed

each transferring member, to be applied in reduction of premiums on the new policy from time to time as the premiums were paid, but no credit was allowed on any one premium for more than half the premium. In the case of lien policies the credit was applied on the lien. The company started on its books what was called the "Premium Fund" (Rec. p. 143). The total amount of credits allowed each transferring member was equal to the amount of his deposit in the Guaranty Trust Fund and interest.

The amount of the credit however was not charged against the Guaranty Trust Fund, but was charged to the Contingent Fund and credited to the Premium Fund, as the other half of the premiums was paid (Rec. p. 144, 123). As it was extremely burdensome to the old members to pay premiums based on their attained age at the time of the transfer, what was known as a lien policy was devised (Rec. p. 386, 394, 387). Copies of the applications for lien policies are found on pages 91 and 187 of the Record. By this method the new policy issued to the transferring member was dated back to the date of his original mortuary assessment certificate. The premium was accordingly based on the age of the member at the time he took out his old certificate. As this policy by its terms required of the company the maintenance of a 4 per cent reserve from the date of the policy, which of course the company had not in fact received, it was consequently necessary to charge against the policy so dated back, a lien equal to the reserve which would have accumulated had

the members in fact been paying the level premium stipulated in the policy from its assumed date (less the special credit referred to). This lien was of course consented to by the member in his application for transfer.

It is conclusively shown by the evidence that the transfer of members was carried out fairly and equitably (Report of Ins. Com. p. 467-472). The method of prorating the operating expenses of the company among the mortuary assessment certificate holders on the one hand, and the Guaranteed Option Policy holders on the other is a fair example of the careful treatment of those members who elected to retain their old certificates. This is fully described on pages 402-408 of the Record. All expenses pertaining solely to the mortuary assessment certificates were charged to them. All expenses relating solely to the Guaranteed Option Policies were charged only to them. Those expenditures made for the benefit of both classes were prorated according to the total amount of insurance in force in each class from month to month. All doubts were resolved in favor of the holders of mortuary assessment certificates (Rec. p. 403). It will be remembered that the Operating Fund was made up of membership fees and dues from the mortuary assessment holders, and the Premium Fund from the contributions of the holders of new forms of policies. For example, the expenses of 1901 were $136,349.47. Of this, all commissions, agency expenses, rent of agency offices, and the entire cost of all new business and transfers, amounting to $91,721.72, were

charged direct to the Premium Fund (contributed by G. O. P. holders). Only $790.95 was charged direct to the Operating Fund (Mortuary Ass. Cer. holders) The balance $43,836.80, which covered certain expenses of the home office was prorated among the two classes in proportion to the amount of insurance in force in each. The operating fund paid $13,633.22, and the premium fund $30 203.58. So that of a total expense of $136,349.47 only $14,424.17 was charged to holders of the mortuary assessment certificates, and that amount represents but 31.1 per cent of a portion of the expenses of the home office.

At the time the testimony was taken in May, 1902 the average age of the then holders of mortuary assessment certificates was 54 years. On December 31, 1898, it was 46.12 (Rec. p. 392). As no new business was added to this class during that period over three years of this increase is accounted for by mere lapse of time. Complainants attempted to account for the increase by charging it to the transfer of young members. But the evidence does not substantiate this claim. On the contrary it shows that this increase is due to the tremendous number of lapses, which had been continuing since 1894 at the rate of $3,400,000 per year. It was for the very purpose of guarding against the effect of this tremendous lapse and increase in average age, which was plainly imminent in 1898, that the plan of transfer was inaugurated. It is a well known fact that the lapses are always principally among the younger members and unimpaired risks. If the company

had continued under the old plan the great number of lapses, the increase in mortality and consequent increase of assessments, would have driven out the younger members entirely, and left none but the old and impaired risks, and the average age of the assessment certificate holders would have been greater than it is today.

3. *Third Period.*

By the middle of the year 1901 the company had succeeded in getting most of its business onto a level premium basis, and the progress being made in transferring members indicated that the remaining insurance on the old plan would soon be all transferred. But the company *was unable to make satisfactory progress in the acquisition of new business.* The reasons for this are plain.

The company was still an assessment company. It was operating under a statute which related solely to assessment companies. In order to comply with the law, and make the policies assessment contracts, it had been necessary to insert in the Guaranteed Option Policy the "safety clause" above referred to. Although the premium rates on these policies were based on the mortality tables and together with the additional premium payments by the policy holders, were sufficient to mature the policies, and it was not contemplated that the company would ever have to ask for increased premiums the effect of such a safety clause on a prospective new member is apparent. The agents of competing old line com-

panies had merely to call attention to this clause, and the fact that the policy holder would pay substantially old line rates, *with the possibility of being called on for more*, to defeat the company's efforts to get new business. Furthermore, the business of assessment insurance had fallen into disrepute, was regarded unsafe, and was hindered by adverse legislation and rulings of insurance departments (Rec. p. 382, 498, 499). It was necessary for the company to be able to hold itself out as an old line company in order to get new business.

Accordingly under the advice of the Insurance Commissioner and the actuaries, steps were taken to place the company on an old line basis.

The legislature of Minnesota, recognizing the necessity of this move on the part of assessment companies, had provided for it by statute, as had the legislatures of many other states.

In 1895 the Minnesota legislature had passed "an act to revise and codify the insurance laws of the State" (Chapter 175 Laws 1895). This act is very long, and it is unnecessary to set it out in this brief. In 1901 the legislature amended this code so as to authorize assessment companies to go onto the old line or legal reserve basis. This act is chapter 143 of the laws of 1901, approved April 6, 1901. It is set forth in full in the appendix to this brief. The amendments to the act of 1895, in so far as they are material in this case are italicized. This act authorized any assessment company to accept the provisions of the act and qualify on a legal reserve basis (provided of course it had sufficient assets) by a

two-thirds vote of all votes cast by the members, at any special meeting called for that purpose, or by a similar vote at any regular annual meeting, "provided (Sections 21 and 63) that nothing herein contained shall impair or operate to impair the obligation of any contract"; and further that every assessment contract or policy issued prior to such change must be carried out and fulfilled according to its terms "subject to change by the parties thereto." Also that in determining the statutory reserve liability of the company, the insurance commissioner should value its old assessment contracts as one year renewable term policies. The defendant company, at a regular annual meeting of its members held on August 5, 1901, (the time fixed in the by-laws) of which notice was given to all members (Rec. p. 415, Rec. p. 131-132, 184), accepted the provisions of this statute. The record of the meeting is shown on Record pages 362-6.

Of a total of $15,501,500.00 insurance in force on July 31, 1901 (Rec. p. 134), there was represented in person and by proxy at this meeting $9,265,000. The resolution accepting the provisions of the law of 1901, was passed by a vote of $9,213,000 in its favor, and four votes (one ballot) representing $4,000.00 against it. Each $1,000 of insurance cast one vote (By-laws, Sec. 3, Rec. p. 314, 375-6).

It is undisputed that the formal requirements of the law were complied with in every particular. The name of the company was changed to The Minnesota Mutual Life Insurance Company. The amend-

ed articles appear as defendant's Exhibit E (Rec. p. 324-326, p. 365).

On August 9, 1901, pursuant to the amended articles, the board of trustees adopted amended by-laws (Rec. p. 366-367-8), Exhibit F. (Rec. p. 326-328). The articles are general in terms, and of course retain the mutual feature.

Article X of the former articles, relating to the Guaranty Trust Fund, was continued in force by Articles IX and X of the new articles (Rec. p. 325).

The by-laws give the members the same voice as before in the affairs of the company, and Article IV, Sec. 1 is as follows (Rec. p. 328):

"Section 1. To the extent necessary to protect and continue the rights and privileges of any member holding a mortuary assessment certificate and to preserve and secure the fulfillment of all contract obligations to him, and to continue and perpetuate in the company the power and authority to levy assessments, and to do and perform all and everything necessary or expedient to enable it to carry out the mortuary assessment contracts in accordance with the terms thereof, and with the law and present by-laws in such case made and provided, the present and existing by-laws shall continue in full force and effect."

Since August 5, 1901, the company has been doing business under the amended articles and by-laws. All new policies have of course been issued on a legal reserve basis.

The transfer of members from the mortuary assessment certificate plan has continued as before

(Rec. p. 385-6), except that the new policies issued in exchange since August 5, 1901, have not contained the "safety clause" found in the Guaranteed Option policies issued prior to that date.

The amount of mortuary assessment certificates in force was reduced by transfers, lapses and deaths from $4,376,000 on July 31, 1901, to $2,835,000 on December 31, 1901 (Rec. p. 408). By May 31, 1902, the amount had fallen below $2,300,000 (Rec. p. 433). Though the record does not show the exact figures, it is only fair to assume considering the rate at which these transfers were being made at the time the last testimony was taken that the amount of the mortuary assessment certificates in force has now been reduced by transfers, deaths and lapses to less than $450,000, and it is only a question of a short time when they will disappear altogether. The company has of course faithfully carried out its contracts with all the remaining members on that plan, has levied assessments as provided by the by-laws, and kept all the machinery relating to these contracts in motion. Every death loss has been paid in full, (Rec. p. 432-451). There has been an increase in the number of assessments, (Rec. p. 389) but the evidence shows and the lower court found as a fact (Rec. p. 747) that "this was exactly what was to be anticipated from the very nature of the association, and it cannot be justly claimed that the increase in the assessments is attributable to the change in the method of doing business. At the present time there is no complaint that these assessments are unreasonable,

On the contrary, the evidence plainly shows that they are in themselves insufficient to pay the cost of the insurance granted under the old contracts."

To be more specific on this point let us examine the evidence in detail. It must be remembered that by the terms of the articles (Exhibit C., Rec. p. 301-2) *one mortuary assessment* was to be levied for each death. The table showing the number of deaths and number of assessments in each year (Rec. p. 389) shows that the company has never since 1886 levied the full number of assessments which its members might have been required to pay. The record shows (p. 377) that the total payments of every nature made by complainant Trubey during the nine years his certificates were in force from March 13, 1893, to April, 1902, on $6,000 of insurance, age at entry 40 years, was $1,035. The table of *net* annual premiums (Rec. p. 508) shows that the net annual premiums (without expense loading) on a level premium basis, for $1,000, age 40 years, is $23.68, so that the total net premiums for nine years on $6,000 would amount to $1,278.72. Add to this 15 per cent for expense loading (which is very low, as the expense loading runs from 15 per cent to 30 per cent) makes the total amount which Trubey would have had to pay on a level premium basis, to pay the cost of his insurance, $1,470.52, so that to April, 1902, he has paid $335.52 less than the cost of his insurance on a level premium basis. As it is inevitable that the cost of his insurance must be paid by him sooner or later, it would follow that under the inexorable laws of mortality he would be re-

quired to pay increased assessments in the future. This demonstrates that any increase in his assessments which has heretofore taken place (and which was very moderate Rec. p. 377) has been only the inevitable result of the assessment system. After the amendments of August 5, 1901, were made, it took some weeks to prepare forms of policies, tables of rates, etc., so that the writing of new business on "old line" plan did not begin in earnest until January 1, 1902 (Rec. p. 434). At the time of taking the testimony in the spring of 1902 new business was being written at the rate of two millions a year, and the volume of new business was increasing every month (Rec. p. 435). The company is licensed and is doing business in twenty-one states (Rec. p. 433-4). It is the undisputed evidence that the company is in a prosperous condition, and it was so found by the Court. The evidence shows and the Court so found that the value of mortuary assessment certificate contracts had not in fact been impaired by the change, but had been increased in value and stability.

II.

History of Complainants' Connection With the Company.

This suit was originally instituted by J. C. Iverson and Samuel Wright. Iverson shortly afterwards withdrew (Rec. p. 100) and the complainant Trubey intervened and was substituted (Rec. p. 59, 60, 61, 62).

1. Samuel Wright became a member December 10, 1892 (Rec. p. 197). Two certificates were issued to him (Rec. p. 207-8). He continued to be a member until October, 1899, (Rec. p. 215, complainants' Exhibits "N" and "P"). The statement of all payments made by him is in the Record (Rec. p. 375).

Mr. Wright states that in October, 1899, a representative of the company called on him and informed him of the change of plan inaugurated by the company (Rec. p. 199-200), and the fact that transfers were being made, and he was solicited to transfer. The written details of the plan were left with him (Rec. p. 199. Exhibit "NN", p. 215). Further details were given him on December 12, 1899. (Ex. "O", p. 218). Mr. Wright says he told the agent he did not desire to embrace the new plan, and that he would terminate his connection with the company and look elsewhere for his insurance (Rec. p. 201).

On December 13, 1899, in response to a letter of December 12, 1899 from the company's representative explaining further the plan of transfer (Ex. "O", p. 218), Mr. Wright wrote as follows (Rec. p. 201, Exhibit "P", Rec. p. 215):

"Yours of the 12th at hand contents noted. I see no reason for changing my mind since I saw you two or three months ago. I shall adhere to my then determination which was to cancel."

It will be noted that the agent's *letters* to Mr. Wright, which are tangible evidence, differ very materially in tone from Mr. Wright's claims as to what the agent stated to him orally.

On June 4, 1900, he wrote the company as follows

(Rec. p. 215, Ex. "N"):

"In October last I ordered your state manager, Mr. E. W. Leonard, to cancel my certificates of policies Nos. 10608 9 at once as I did not desire to embrace your new plan. At that time he gave me a statement showing that I had coming to me the sum of ($137.00) one hundred and thirty-seven dollars.

"I now demand of you the return to me at once of the above amount with interest thereon together with any other sum that may be due me from your Company."

This $137.00 which he thought was "due" him was merely the special credit to be allowed on the premiums of the new policy in case he transferred.

Mr. Wright therefore elected to abandon his contract with defendant company, and terminate his connection therewith in October, 1899, nearly two years before the company went onto the "old line" basis, and just two years before this suit was instituted, had full information of the change of December, 1898, and the fact that transfers were being made and that the company had ceased to write business on the old plan. He never paid any dues or assessments after that date (Rec. p. 374-5). On December 4, 1899, a mortuary assessment was levied on the members (Rec. p. 368-9-370). Due notice of this assessment was given Mr. Wright (Rec. p. 370-1-2-3-4, Exhibit 42; Rec. p. 462 3-4) in accordance with the articles and by-laws. The amount of Mr. Wright's assessment due January 3, 1900, was $16.-40. He never paid this amount (Rec. p. 374-5).

2. Complainant Trubey became a member March 13, 1893 (Rec. p. 231). Three certificates

were issued to him (Rec. p. 231, Exhibit "B", Rec. p. 255). He states that knowledge of the fact that the company had changed its plan and was transferring members was given him in either the latter part of 1899 or the first part of 1900 (p. 234). The details of the plan were laid before him at that time and he was solicited to transfer (Rec. p. 234).

Further information was given him in February and March, 1901, (Ex. "F" and "E", Rec. p. 257-8). He therefore had full notice of the change of 1898 and of the manner in which transfers were being made and of the fact that the company had ceased the solicitation of members on the mortuary assessment plan, nearly two years before this suit was instituted.

Trubey was present at the annual meeting of August 5, 1901, at which the company resolved to qualify as an "old line" company (Rec. p. 363). The records of the company show that he did not vote against the reorganization. That the only member who voted against it was the holder of a $4,000.00 of insurance (Trubey held $6,000.00) (Rec. p. 365), and the dissenting member was A. F. Foster of Litchfield, Minn. (Rec. p. 376). In other words the company's records show that *if Mr. Trubey voted at all he voted in favor of the reorganization.* As the total number of votes present was not cast on this resolution, so far as the records show, it would be impossible to tell whether Mr. Trubey voted at all on the question. But Mr. Trubey settles that question by saying that he did vote and voted against the resolution. Conceding then that his statement that

he voted is correct, there is a square conflict between his statement that he voted against the resolution, and the records of the meeting which show that he did not vote against it. Mr. Trubey's testimony is in very peculiar shape on this point. When his testimony was first taken by complainants he very carefully refrained from mentioning the fact that he had been present at this meeting (Rec. p. 231-254). After the record of the meeting showing his presence, and the fact that he did not vote against the reorganization, was introduced by defendants (Rec. p. 363), his testimony was again taken by complainants (Rec. p. 263). He then testified, in response to questions by his counsel, that he was present at the meeting, and as follows (Rec. p. 274-5):

"Q. * * *You may state how you voted at that time.

A. I voted against it and know of others who did also.

Q. Did you vote on every proposition there?

A. I voted in every proposition with reference to reorganization, and I also voted against every proposition with reference to the reorganization, and also the acceptance of the Secretary's report."

There was only one resolution for reorganization presented (Rec. p. 363). After this testimony was completed and the examination was closed, and the solicitor for defendants had returned to St. Paul, Mr. Trubey awoke to the fact that he had admitted voting on the question of reorganization, and that it was his unsupported statement against the records of the company, made at the time, as to whether he voted against or for the reorganization. He there-

fore, after his testimony was transcribed, made radical additions and changes to it (See Certificate of Notary, Rec. p. 274-5). He interlined the statement that *he did not remain until the meeting ended*, and that he voted upon the resolution, *if it was voted upon while he was there*. The Notary certifies that these statements were not made by the witness at the hearing. It is no doubt proper for a witness whose deposition has been taken, to request and make corrections in the stenographer's transcript to make it conform to what he actually said at the examination. But it is certainly improper after the examination has closed and the attorneys departed, and the opportunity for cross-examination gone, to make alterations so as to essentially change the statements made at the hearing. Mr. Trubey no doubt thought we would not discover these alterations or have any method of disclosing them to the Court. He was mistaken, for we succeeded in obtaining an additional certificate from the notary showing what his real testimony was.

Mr. Trubey's membership lapsed on September 30, 1901, for failure to pay the September annual dues. This was a fixed charge (not assessment) unvarying in amount, and by the terms of the articles and by-laws in force since the organization of the company, was payable on or before the last secular day in September of each year *without demand therefor* (Exhibit "C", Art. XIII, p. 305. Sec. 3, Rec. p. 319). The company had moreover sent him notice (Rec. p. 416 8-9, Exhibit 45, Rec. p. 466).

On October 10, 1901, Mr. Trubey called at the

office of the company in St. Paul and applied for reinstatement (Rec. p. 378-9). Reinstatement was not a matter of right, but was discretionary with the company on satisfactory proof of health (Art. VIII, Rec. p. 303, 318). Mr. Trubey signed a health certificate and paid up his back dues and was reinstated. The health certificate recites that his membership had terminated, and that he applied for reinstatement and warrants his present good health (Exhibit 43, Rec. p. 242, 464). There is another conflict in the testimony as to what took place at this interview. Mr. Palmer, the president of the company says (Rec. p. 378-9-80, 419-420) that Trubey stated he knew his annual dues were due in September, and that he had failed to pay them because he had heard "rumors" about the bad condition of the company, but that he was satisfied that everything was all right and approved the reorganization and wanted to reinstate. Mr. Trubey denies this (Rec. p. 261, 239). Certain facts are undisputed however. The forces behind this litigation will be considered hereafter. It is only necessary to state at this time that Mr. Trubey was taking an active part in it. His office in Chicago was in the Masonic Temple Building in the room adjoining that of Dillon & Goetz, solicitors for complainants (Rec. p. 240, 674). He was in constant conference with Edmund D. Carter and Messrs. Dillon & Goetz relating to this litigation (Rec. p. 674-7). It was he who first got in touch with Carter and turned him over to Dillon & Goetz (Rec. p. 597). The evidence is conclusive that Trubey was one of the prime movers

in this litigation. The suit had been contemplated for months (Rec. p. 672). He saw a copy of the bill in Dillon & Goetz' office before he went to St. Paul (Rec. p. 241). Before the interview with Mr. Palmer, at which he was reinstated and on the same day, October 10, 1901, he had a conference with Mr. Byers, the local counsel for complainants at Minneapolis (Rec. p. 241, 264). Mr. Byers had the bill in his possession and its contents were discussed (Rec. p. 241, 672). After the consultation with Mr. Byers Trubey immediately went to St. Paul and applied for reinstatement on October 10. He says he knew the bill was to be filed in a day or so (Rec. p. 254). He *admits he never mentioned this proposed suit to Mr. Palmer* (Rec. p. 242). *The bill of complaint was filed October* 10, *and the subpoena served on the defendants on October* 11, (Rec. p. 48-9). Trubey afterwards made a desperate effort to keep J. C. Iverson from withdrawing, and made a trip to Milwaukee for that purpose, and after failure in his efforts became a party plaintiff in order, as he admits, to prevent the suit going by default (Rec. p. 246, 598).

III.

The History of this Litigation.

The lower Court found in substance that this suit is an iniquitous attempt to wreck this company. That the prime mover in it is a "dishonest rascal" named Edmund D. Carter, who interested others with him in an effort to "line his own pockets."

While the language of the Court was severe it fell short of what the evidence justified.

The record shows conclusively that this suit is the culmination of a conspiracy of several years standing to destroy this company. The originator of the scheme, and the man who instigated and worked up the present suit, and has worked hand in glove with the complainants and their attorneys in prosecuting it, is this man Carter, late of Milwaukee, now of Chicago, an insurance solicitor when he is not engaged in some such scheme as the present, and a "common blackmailer," as Mr. Iverson called him (Rec. p. 600). The testimony *proving* this conspiracy is necessarily of considerable length, and no attempt will be made to give the Court more than a bare outline.

The general plan of operations has been to stir up dissatisfaction among the members, to convince them that the company was being fraudulently mismanaged, to discredit the company in the public mind by making sensational attacks and charges of dishonesty, with the idea of having the matter widely published; to thus prevent the company from getting business and cripple it; and then when the assaults had their effect, to commence a sensational suit for a receiver, stampede the members, wreck the company and get a large amount of receiver's and attorney's fees. The alternative of having the company buy them off has always been a prominent consideration.

Carter first appeared on the scene in Milwaukee in 1896. He called on John F. Burke, an attorney

of that city, and a member of the company, and stated that the company's affairs were being grossly mismanaged (Rec. p. 602).

The first attack which Carter made was in June, 1897, when in behalf of Alois G. Bodden, a member whom he had then been working on, he presented a complaint to the Insurance Commissioner of the State of Wisconsin, charging the company with fraud, in order to have its license revoked (Rec. p. 528-33). The complaint was dismissed by the Commissioner (Rec. p. 540).

Carter continued his work among the members in Milwaukee, and printed and published a pamphlet in which he charged the officers and trustees of the company with fraud (Rec. p. 690). A subsequent edition of this pamphlet called "The Bankers Life Brought Down to Date," Carter threatened to publish unless the company would pay him $25,000.00 in consideration of which he would "let up on the Bankers Life and go to Mexico" (Rec. p. 606 7); and later with the assistance of certain attorneys in that city whom he interested, he succeeded in procuring an indictment against the trustees and officers for fraudulent use of mails, which Carter and his associates prevailed upon the United States grand jury at Milwaukee to return in April, 1899 (Rec. p. 604-5-6). Carter was the principal witness. The indictment was immediately quashed by Judge Seaman. This indictment was widely mentioned in the press of the country, as it was intended to be. The company immediately engaged an experienced insurance detective named Edward P. Kenyon, who was

at that time in the employ of a well known detective agency (Rec. p. 682). Kenyon was placed on this case about May 1st, 1899, to find the motive of this attack and the parties behind it. His testimony should all be read (Rec. p. 682-713). He went to Milwaukee, got in touch with Carter and ascertained that a conspiracy existed, in which Carter was taking the leading part, to extort money from the company, or wreck it; that this indictment had been obtained by the conspirators with the idea of following it up by proceedings for the appointment of a receiver. Kenyon made daily written reports which he used to refresh his memory when his testimony was taken. Carter had prepared the indictment and expected to get a "good big piece of money" for "busting up the Bankers Life" (Rec. p. 687). Carter's plan at that time was "to bring about the dissolution of the Bankers Life, or if they wanted to make a settlement with him at any time, he discontinuing his work of pursuing them in the manner he was, he would consider it" (Rec. p. 690, 691).

The first indictment having been quashed, Carter prepared a second proposed indictment (Rec. p. 706; Exhibit 9, p. 724; Exhibit 18, p. 735-707).

Kenyon and Carter became very friendly and Carter prepared and signed a contract, (Rec. p. 697-8-709; Exhibit 16, p. 734), in which it was agreed that Kenyon was to have 10 per cent of all moneys received by Carter in accomplishing the dissolution of the company not exceeding $5,000.00 (Exhibit 11, p. 731). In June, 1899, Carter came to St.

Paul bringing Kenyon with him, with the double purpose of either obtaining blackmail from the company or getting some Minneapolis attorney to commence proceedings for a receiver (Rec. p. 700-1). Carter had not the courage to make a proposition to the company, but tried to get Kenyon to do it. He wanted the company to give him an annuity of $2,000.00 or a lump sum of $50,000.00 on condition that he would leave the country (Rec. p. 702-3-4). The company made no offer, and the trip was a failure. Carter's next idea was to sell the company the evidence he had against his co-conspirators (Rec. p. 704-5; Exhibit 17, p. 734-5), the price to include "the absence of E. D. C., conspirator in chief, permanently from the shores of America."

In June, 1900, Carter attempted to call indignation meetings of the policy holders in Milwaukee (Rec. p. 603-4, 546-7, 554-9, 601) to raise funds to start a suit. In November, 1900 Carter again called on Burke, the company's attorney at Milwaukee, to blackmail the company. He prepared a revised edition of his pamphlet called "The Bankers Life Brought Down to Date," and threatened to publish it. He offered to leave the country and "let up" on the company for $25,000.00 to be deposited to his credit in Mexico (Rec. p. 606 7). In the spring or summer of 1901 Carter went to Chicago and Messrs. Trubey and Dillon & Goetz joined with him in his enterprise. Trubey is engaged in the business of handling personal injury claims with an office at Room 1598, Masonic Temple, Chicago, (Rec. p. 240). Dillon & Goetz are next door, room 1510. Carter

first laid his plan before Trubey, who placed Carter and his case in the hands of Messrs. Dillon & Goetz (Rec. p. 596-7-8, 243). Carter was established in the office of Dillon & Goetz and went to work on the case. He supplied the alleged information on which this suit was based (Rec. p. 245-6). Carter, Trubey, and Dillon & Goetz were in constant conference about the case (Rec. p. 243-4, 674-7). The first step was the preparation of the bill of complaint. Carter assisted in the preparation of this proposed bill, and the written portions of it were in his handwriting (Rec. p. 542-3). The next step was to procure some member of the company in good standing to act as complainant and sign the bill. Mr. Trubey says he refused to appear as complainant at that time. Under the circumstances his reasons for desiring some other member to appear in this capacity are readily understood. It became necessary therefore to interview members and induce some one to act as plaintiff. This work was principally done by Carter and Mr. Goetz. When a member called at Dillon & Goetz' office he was referred to Mr. Carter for information about the case (Rec. p. 655). They personally interviewed members in Chicago and Milwaukee, represented that the company was being fraudulently mismanaged, and endeavored to induce members to permit the use of their names as parties plaintiff (See testimony of Geilfuss, Rec. p. 541-6, 553), Kuenzli (Rec. p. 548-550, 348), Oberndorf (Rec. p. 612-615, 343), Knell (Rec. p. 525), Pank (Rec. p. 617-9), Anderson (Rec. p. 653-6), Iverson (Rec. p. 590-2). Mr. Iverson was induced

to sign the bill (Rec. p. 595-6). On learning the real nature of the case he afterwards withdrew (Rec. p. 599-600).

It has heretofore been stated that Trubey had permitted his membership to lapse, but proceeded to Minneapolis and after an interview with Mr. Byers, on the subject of the case, came to the home office of the company and obtained reinstatement without mentioning the proposed suit, undoubtedly in order to place himself in a better position to appear as a plaintiff, if necessary (See statement of facts on Mr. Trubey's connection with the company). The very same day, October 10, 1901, the bill of complaint was filed. It is just such an incoherent document as one would expect Carter to prepare, judging from his former literary efforts shown in the record, and is replete with charges of gross dishonesty on the part of the officers, and of "utter and hopeless insolvency," intended to discredit the company and stampede the members. These charges were utterly groundless as the Court found; in fact no sincere effort was made to sustain them.

In the meanwhile Carter was working industriously in the office of Dillon & Goetz. Within four days after the bill was filed a tremendous amount of literature addressed to members was mailed from the office of Dillon & Goetz, addressed in the handwriting of Edmund D. Carter. Samples of this literature were produced by the witnesses Rennick (Rec. p. 620-621; Defendants' Exhibits 1 and 2, p. 717-8), Miller (Rec. p. 623-4; Defendants' Exhibits 3, 4 and 5, Rec. p. 718-9), Woodward (Rec. p. 627-8; Ex-

hibits 6 and 7, Rec. p. 719-20), Maher (Rec. p. 713-4; Defendants' Exhibits 13, 14 and 15, Rec. p. 732-3), Scanlon (Rec. p. 516-7-8; Exhibits 23, 24 and 25, Rec. p. 518-19), Knell (Rec. p. 523-4-5), Iverson (Rec. p. 592-5).

The handwriting of Carter is identified by the witnesses Kenyon and Burke. The identity of the circulars is further established by the testimony of Mr. Palmer (Rec. p. 419-421). This literature consisted of circular letters purporting to come from Iverson and Wright addressed to members of the company, stating that "*at the instigation and request of a great many policy holders* we have brought suit in the U. S. Circuit Court against the above named company" for the appointment of a receiver on the ground of "gross and fraudulent" mismanagement, and requesting the members to employ "our attorneys Dillon & Goetz, and our counsel John F. Byers" to make them parties to the suit. Enclosed with this circular was a blank power of attorney for the employment of Messrs. Dillon & Goetz and John F. Byers. As apparently these circulars did not meet with the response expected, the later ones had the following endorsement on the blank power of attorney: "Costs, expenses and attorneys' fees to be paid out of proceeds pro rata by order of Court, otherwise you are only to be liable for your share of costs and expenses not to exceed $3.00 (Rec. p. 519). Iverson says he did not know of this letter until after it was issued (Rec. p. 592). The statement that the suit had been begun at the *instigation* and *request* of a *large number* of policy holders was abso-

lutely false. Iverson says no one ever requested him to commence the suit except Carter and Goetz (Rec. p. 595). Wright was unable to name a single member who had ever requested him to institute a suit (Rec. p. 586-7). He admitted that the circular was sent out to make the company "disgorge" (Rec. p. 584). Carter and Dillon & Goetz were all put upon the stand and given an opportunity to tell who these "*great many members*" were. They refused to testify, claiming that the information was "privileged" (Rec. p. 629 et seq, 646 et seq, 650 et seq). The record is convincing that at the time this circular was sent out the only member they had whose policy had not lapsed long before, was J. C. Iverson. Trubey admitted that he made an earnest effort to prevent Iverson from withdrawing, and that when Iverson's name was withdrawn Trubey himself had to become a party to prevent the suit going by default (Rec. p. 596-600, 246, 678).

Let us see what was the fruit of these circular letters sent out by the hundreds. Three months after they had been issued complainants made a motion to make additional parties plaintiffs (Rec. p. 335-341). They presented a list of some thirty-five names, whom they alleged were "members." On the hearing it developed that there were only five on the list whose policies were in force. The rest were all lapsed members (Rec. p. 344-5-6). all but one of whom had lapsed prior to the reorganization of the company, and some as far back as 1898. Of the five members whose policies were still in force, one filed an affidavit that he had never authorized the use

of his name (Rec. p. 342), two others filed affidavits that they had been induced by Dillon & Goetz, or their agents, to join in the suit, by representations that the officers of the company were guilty of fraud and dishonesty, and they desired to have their names withdrawn, as they had been misled (Rec. p. 343, 348), and one more filed a petition to withdraw (Rec. p. 347). The motion was denied, on the technical ground that the motion papers did not contain proposed amendments to the bill connecting these individuals with the case, and the application was never renewed.

The last effort of the plaintiffs to stampede the members took place in March, 1902. The regular annual meeting of the members took place on March 4, 1902, as provided in the new articles. On March 1st, 1902 (Rec. p. 98-9) just prior to this meeting, complainants filed notice of motion for the appointment of a receiver *pendente lite*, on the ground of the insolvency of the company to be heard March 10th, after the meeting. The purpose was obvious, but the attempt failed, and the motion for a receiver *pendente lite* was so frivolous that the Court denied it without hearing defendant.

Only one other fact need be mentioned. Mr. Trubey testified that so far as he knew Carter had no financial interest in this case. We are asked to believe that this man, who for years had been pushing a blackmailing scheme against this company, and endeavoring to extort money and to make contracts with attorneys and others for the dissolution of this company, by which he was to get a large share of the

receiver's and attorney's fees, and who established himself in the office of Dillon & Goetz, and has done the lion's share of the work in this case, is not financially interested in it. We need only call the Court's attention to the testimony of Mr. Anderson (Rec. p. 653-665). He was an old gentleman, a member of the company, who was very much concerned at the possibility of having the company wound up and his insurance lost (Rec. p. 660). Some time after the suit was instituted he called at Dillon & Goetz' office, upon his own responsibility, and without any authority from the company, to find out what it would take to settle the case. He had some talk with Mr. Dillon, who referred him to Mr. Carter. Mr. Anderson testified as follows:

"He (Mr. Dillon) said 'Now you had better talk to Mr. Carter about this, and *see what you can do with him and what he says about it*,' and then I went out—Mr. Carter, had a little desk in the outside office, and I went out and had a long talk with Mr. Carter on the same line," etc.

And Carter told him "You had better see what you can do with the company, what you can get from the company, before you come to us." In short, if any settlement was to be made of this suit Mr. Carter was the man the company must deal with.

ARGUMENT.

I.

Although it is alleged in the bill that this suit was instituted by the complainants for the benefit of themselves and all other persons similarly situated, no relief can be granted unless appellants show themselves entitled to it.

In the case of Hubbell v. Warren, 8 Allen 173, a bill in equity was brought by plaintiff in behalf of himself and such others having an alleged right in common with him as should come in to prosecute the suit, to restrain defendant from constructing a building less than twelve feet from a street, the Court said:

> "This bill is brought by the plaintiff for the benefit of himself and of all other persons whose estates are similarly situated with his own on the same street and are entitled, as he alleges, to the same right or privilege as that which he sets up as belonging to the premises which are owned and occupied by himself. But as no other person has actually come in to prosecute the suit jointly with the plaintiff, it stands like a creditor's bill, and he is to be regarded as *dominus litis*. As the case is now presented the bill cannot be maintained unless satisfactory evidence is offered of a right in him to equitable relief."

Wright and Trubey were the only parties plaintiff in the Court below, and are of course the only parties whose rights are before this Court. No relief

can be granted in this case unless they personally are entitled to it. They cannot obtain a decree for the benefit of members who have never applied for it, and presumably do not desire it. This principle is important as a number of the points urged by defendants are personal to these two appellants.

II.

It is an elementary principle that a member of a mutual Company is bound by the articles and by-laws in operation at the time he becomes a member. He cannot question their validity.

Pfister v. Gerwig, 122 Indiana 567.

It will therefore be unnecessary to consider any of the articles or by-laws, or transactions of the Company, prior to the time the appellants became members. In determining what was the contract between the appellants and the Company, and what was the character and purpose of the Company, and whether there has been any violation of the contract or fundamental departure from the purpose of the corporation, nothing prior to December 10, 1892, the date of Wright's membership, is material.

III.

The action of the defendant company, through its trustees, in adopting about January 1, 1899, amended articles and by-laws and in issuing thereunder the so-called Guaranteed Option policies, and in transferring members and ceasing to solicit members on

the mortuary assessment certificate plan was not a fundamental departure from the original purposes of the corporation, nor *ultra vires* nor a breach of appellants' contract.

Considered in natural and chronological order, the first points urged by appellants are contained in the 2nd assignment of error. The acts therein referred to took place during what has been already described as the Second Period of the Company's history. As it can hardly be claimed that the issuance of the guaranteed option policies and the transfer of members were not authorized by the terms of the amended articles and by-laws of December 21, 1898, the real question is whether those articles and by-laws were valid.

The defendants' position on these propositions is as follows:

1st. The Minnesota Statute (Chap. 184 Laws of 1885) under which the Company was organized and operating, authorized the operation thereunder of any kind of assessment Company.

2nd. The articles under which appellants became members expressly empowered the trustees to make amendments therein and change the company's plan of action.

3rd. The amended articles of 1898 did not change the character of the Company as an assessment Company, nor alter the terms of existing contracts, but merely provided for the issuance of new forms of as-

sessment policies and were within the powers vested in the Board of Trustees, and the Guaranteed Option Policy was in fact an assessment policy.

1. The legislative act under which the Company was operating (Chap. 184 Laws 1885), authorized any form of cooperative or assessment company. Section one of the act states generally that cooperative or assessment companies may be organized thereunder. The definition of cooperative or assessment companies contained in Section 5 is of the most general nature, and is broad enough to include all companies of that character.

By Section 2 the particular mode and manner of doing business is left entirely to the members of the corporation.

Section 7 of the act, providing for annual statements, shows (paragraphs nineteen and twenty) that the legislature intended that companies operating under this act should not be restricted to collecting from the members merely sufficient to pay current expenses and death losses, but might collect assessments in advance and accumulate a reserve fund. Section 19 expressly provides that nothing in the act shall be construed to prevent the creation of a reserve fund by such corporation.

Section 7 (paragraphs 21st, 22nd, 23rd, and 28th) expressly recognizes the right of such company to issue different forms of contracts and to divide its business into classes. There can be no doubt that this law, authorized every kind of cooperative and assessment company. A company might collect its

assessments at such times and in such amounts as it saw fit, and it might accumulate a reserve, divide its business into classes, and issue various forms of contracts. The only essential requirement was the one implied in the case of all assessment or cooperative companies, that either the amount of assessments or the amount of payments to beneficiaries should not be limited to a fixed sum.

2. In the articles of 1892 in force when appellants became members, the members had adopted a particular method or mode of doing business. But it was anticipated that the particular method adopted might prove impractical or unsatisfactory, and that changes in the method might have to be made in the future. Therefore it was expressly provided that the Board of Trustees might amend the articles in any particular except as to Article X, regulating the use of the Guaranty Trust Fund. The reason for delegating this power to the trustees was the well known difficulty of getting the scattered members of a life insurance company to take part in its meetings.

A power of amendment contained in the charter of a corporation or in the laws under which it is organized, is a part of the contract with the members and stockholders.

Nugent v. The Supervisors, 19 Wall. 241, 249.

Sparrow v. The Evansville etc. R. R. Co., 7 Ind. 369, 373.

Witter v. The Mississippi Etc. Ry. Co., 20 Ark. 463.

Fry's Executor v. Lexington etc. R. Co., 2 Metcalfe 314, 317.

The only question in such cases is as to the limit of the power. It has sometimes been held that under a general power of amendment no fundamental change in the character of the corporation can be made,and that such a power of amendment does not authorize a change in the express terms of outstanding contracts with members of a mutual insurance company. No such changes were made in this case. What is a fundamental change will be considered hereafter in connection with later acts of the company. It is unnecessary to discuss it here. It will be plain that the amendments of 1898 did not work a fundamental change in the character of the corporation, and that no attempt was made to alter the terms of existing contracts. Whatever the limits of such a power may be, the Board of Trustees could at least under this power change the company's method as to new busness, and provide for the issuance of new forms of policies, and make other changes in the internal management of the company. The existence of this power of amendment plainly indicates that the necessity for such changes was contemplated. Instead of there being any implied agreement in the articles that the company should always continue to issue contracts on the exact plan originally adopted, there is *an express agreement that this plan might be modified.* The power to change the company's method and to issue different forms of contracts to new members necessarily implies the

power to divide the members into classes. The very act of issuing contracts to new members, differing in terms from the existing contracts, would necessarily create new classes.

3. It only remains to determine the character and extent of the amendments of 1898.

a. The character of the company as an assessment company was unchanged. The amended articles and by-laws expressly provided that the company should transact business upon the assessment plan (Rec. p. 308), and that the members' liability to contribute to the payment of death losses should not be limited to a fixed sum, and by the terms of the policies issued this liability was unlimited.

The Guaranteed Option Policies contained provisions that all payments by the insured should be voluntary, and this together with the "safety clause" made these policies pure assessment contracts. The terms of the safety clause differed somewhat in different policies. In some cases the policy provided that if the company was unable to maintain sufficient funds to mature the policies the insured might be called on to pay his share of the deficiency, or the amount thereof might be declared a lien on the policy and be paid out of the proceeds on the death of the insured. Other policies contained merely the provision that the amount of the deficiency should be an indebtedness in the form of a lien on the policy until paid off by dividends or otherwise. These provisions amount to substan-

tially the same thing. In one case the insured might be called on at once to pay the deficiency. In the other, the deficiency might not be paid until the member's death, and then out of the amount due the beneficiary. There is no essential difference in the character of these contracts. They are on the assessment plan, and have been in general use by assessment companies who have gone through a transition, like that through which this company has passed.

Haydel v. Mutual R. F. L. Ass'n, 44 C. C. A. 169; 104 Fed. R 718, S. C. 98 Fed. R. 200.

Rundel v. Kennan, 79 Wis. 492

Elliott v. Des Moines Life, 163 Mo. 132.

Williams v. St. Louis Life Insurance Co., 97 Mo. App. 449.

b. The express obligations of existing contracts were not in the least affected by these amendments. On the contrary, nothing in the amended articles and by-laws tended in the least degree to alter the terms of existing contracts. All provisions of the original articles for the carrying out of these contracts on the part of both members and company were continued in force. The amendments only related to future contracts.

c. Under the amended articles and by-laws the company still had the power to continue the issuance of mortuary assessment certificates on the old plan, in addition to the power to issue new forms of policy. The appellants complain of the fact that the

company ceased the solicitation of new members on the old plan. The reasons for this action are fully set forth in the statement of facts. The officers could not have written sufficient business on this plan to keep the company a going concern, if they had desired it. The amount of business written had fallen from $12,000,000 in 1892 to $2,000,000 in 1898 (Rec. p. 382), and the officers were unable to write enough business on this plan to equal the amount of lapses. This was not the fault of the company or its officers, but was due to adverse legislation and the unpopularity of such insurance with the public. The cessation of attempts to write this business was a matter of sound business judgment and was a matter wholly within the control of the board of trustees, in whom was vested the general management of the Company. We fail to see how any contract was broken by these acts. There was no implied contract with the members that the Company should always continue to write new business on the plan originally adopted. On the contrary, the power of amendment given to the trustees expressly authorized changes in that plan under which all new business might be written. The power was broad enough to authorize an amendment expressly providing that all new business should be written on a modified plan, and that the issuance of certificates on the old plan should be discontinued. If a life insurance company has power to issue various forms of policy, we know of no rule of law which would prevent its officers from devoting their efforts to the solicitation of business with that particular form of contract

which is most favorable to the Company's interests, and on which members can be most easily obtained.

d. The appellants also complain of the acts of the officers in transferring members. If such a provision had not been made, the members of the mortuary assessment plan would have been the first to complain that they had been left behind in a moribund class.

As it was expressly agreed that the articles might be amended so that all new business should be written on a different plan, it was fairly implied that the Company might permit the existing members who desired to do so, to surrender their old contracts and accept the new forms, and if the interests of the Company and the members themselves required it (as the evidence clearly shows) to solicit such transfers.

There certainly was no express agreement in the appellants' contracts that the Company should not permit or solicit members holding similar contracts, to surrender them and accept in lieu thereof other and safer forms of contracts which might be afterwards adopted. Nor can we see how any such obligation can be implied. The contributions of the members were always voluntary, the only penalty for nonpayment being forfeiture. There was nothing to prevent any member from allowing his old mortuary assessment certificate to lapse and then applying for and receiving one of the new forms of policy.

Nor is there any evidence in this case tending to

show that any member was *in fact* injured by such transfers, or the security of any of their contracts impaired. The contrary appears. It is not desirable to restate at length the evidence on this question. The lower court found that the changes made and transfers had not in fact impaired the value of any contract, but were for the best interests of all the members, and carried out with perfect fairness and equity. Briefly summarized the evidence shows:

1st. That if the Company had not made the changes that it did, and transferred the members, the existing contracts would have been greatly impaired in value, if not worthless in a very few years.

2nd. That the transfer of the members has placed the company on a stable and permanent basis, and in a better position to carry out all its obligations.

3rd. That the increase in average age and in the rates of assessment among the remaining holders of the mortuary assessment certificates has not been caused by these transfers but is the inevitable result of other causes already in operation before these transfers commenced, and would undoubtedly have been more aggravated if the transfers had not been made.

4th. That the assessment rates on the members of the mortuary assessment certificates are not unreasonable in amount, and have always been less

than the contracts permitted, and have in fact been less than the cost of the insurance, as determined by scientific principles.

5th. That instead of having impaired its ability to carry out the terms of the mortuary assessment contracts, the company is better able to perform its obligations than it would have been if these transfers and changes had not been made.

The conclusions reached on this branch of the case covering the amendments of 1898, and the tranactions of the company during the Second Period, are

1. That the company under its amended articles was of a character and with powers authorized by the legislative act under which it was organized and operating, and hence the company had legislative consent to the exercise of the powers provided for in the amended articles and by-laws.

2. That the change of plan inaugurated in 1898 was not a fundamental change in the nature of the corporation, but a mere alteration in the manner of transacting its business.

3. The power of amendment contained in the original articles, and which formed part of the contract of every member, authorized the changes which were made, and hence the company had the consent of the members, given in advance, to the exercise of the powers contained in the amended articles and by-laws.

4. It follows that the acts in question were not

ultra vires, either in the sense of being outside the powers granted by the legislature, or in the sense of being beyond the powers agreed to between the members, nor was there a breach of the express or implied obligations of any contract.

As was said in Nugent v. The Supervisors, (P. 251) supra, a subsequent alteration of the organization or purposes of a corporation violates the member's contract, "only when such alteration is both fundamental and not provided for *or contemplated* by either the charter itself or the general laws of the State." In the present case the changes were not fundamental and were contemplated and provided for in the original articles.

IV.

The appellants are estopped by their *laches* to assert the claim that the changes of 1898, and the issuance of the guaranteed option policies and the transfers of members and the internal management of the company during this period in any way violated the terms of their contracts.

The appellant Trubey was informed of the character of the new policy, the fact that members were being transferred, and that the Company proposed to solicit no further business on the old plan, in the latter part of 1899. Similar knowledge was imparted to Wright at about the same time. They were fully informed of the details of the plan. This bill was filed on October 10th, 1901. Between the date that the appellants had notice of the facts and

the commencement of the suit, two years elapsed, during which neither of the appellants took any steps to assert their present claim, by legal proceedings or otherwise. Between December 31, 1899, and July 31, 1901, over $7,000,000 of insurance was transferred by the surrender of the mortuary assessment certificates and the issuance in lieu thereof of the Guaranteed Option Policies, and new policies to a considerable amount issued to new members. The company has gone so far with its new plan, that at the time this suit was commenced it would have been impossible to retrace its steps. It would be grossly inequitable to wind up this Company and wipe out millions of insurance issued and accepted in good faith, at the request of two members who with full knowledge of the facts stood by for two years while the Company's plan was being consummated, and took no steps to prevent it, or assert their objections.

Penn. Mut. Life Co. v. Austin 168 U. S. 685.

Dimpfell v. Ohio & Miss. R. Co., 110 U. S. 209.

Pomeroy in his work on equity, Vol. 2, Section 818, says:

> "Acquiescence consisting of mere silence may also operate as a true estoppel in equity to preclude a party from asserting legal title and rights of property real or personal, or rights of contract. The requisites of such estoppel have been described. A fraudulent intention to deceive or mislead is not essential. All instances of this class in equity rest upon the principle 'if one maintain silence when in conscience he

ought to speak, equity will debar him from speaking when in conscience he ought to remain silent.' "

And in Section 819:

"This species of estoppel as well as other kinds which consist of affirmative acts or representations, applies to corporations in their dealings with third persons and with their own stockholders. * * * Conversely, stockholders may be estopped by their acquiescence from objecting to the acts of the corporation which are not illegal or *mala prohibita*, but *ultra vires* when the rights of innocent third parties have intervened. Express assent is not necessary to estop the stockholders; when they neglect to promptly and actively condemn the unauthorized act, and to seek judicial relief after knowledge of its being done, they will be deemed to have acquiesced and will be estopped as against innocent third persons."

The application of this principle is well illustrated in the case of Kent v. Quicksilver Mining Co., 78 N. Y. 159. In that case the defendant corporation had issued a large amount of stock, all common and on the same basis, without any provision for preferred. Afterwards at an annual meeting a majority of the stockholders voted that holders of stock who should surrender their certificates and pay five dollars on each share should be entitled to the same number of shares of preferred stock, which should bear interest at 7 per cent and the balance of the net earnings should be divided *pro rata* between the holders of the preferred and common stock. A large

amount of this preferred stock was issued and placed on the market and listed in the stock exchange, and for four years the two kinds of stock were mentioned in annual reports of directors. During this time no stockholder took any steps to attack the validity of the preferred stock. In an action subsequently brought by holders of the common stock for that purpose it was held:

> "That such holders were chargeable with notice of the issuance of the preferred stock, and that by acquiescing in the action of the corporation they had ratified and assented thereto, and the same was binding upon them at least as against those holders of the preferred stock who had purchased it after it had been upon the market and dealt in it as a valid and recognized issue; also that as the prayer for relief was that all of the preferred stock should be called in and cancelled, and as it was not practicable to adjudge that a portion of the shares of the preferred stock should be called in and cancelled or equalized with the common stock, without all being so treated, there was no cause of action."

The appellants claim that the amendments of 1898 and the acts of the company in transferring members and issuing the Guaranteed Option Policies were *ultra vires* of the company. In just what sense they use the term *ultra vires* is not stated, but clearly, if these acts were *ultra vires* in any sense, it is not because legislative consent was wanting, but the consent of the members. Assuming that they were *ultra vires* in this limited sense, the principle of estoppel applies to this case. We

are aware that in a number of cases this Court has laid down the rule that the principle of estoppel cannot be invoked to make valid an act of a corporation beyond the scope of its powers.

Thomas v. R. R. Co., 101 U. S. 71.

Oregon Ry. Co. v. Oregonian Ry. 130 U. S. 1.

Central Transp. Co. v. Pullman Car Co., 139 U. S. 24, 59.

Louisville &c. Ry. Co. v. Louisville Trust Co., 174 U. S. 552, 570.

The underlying principle in these cases, is stated by the Court in the Central Transportation Co case, (p. 59) as follows:

> "A contract of a corporation, which is *ultra vires* in the proper sense, that is outside of the object of its creation as defined in the law of its organization, and therefore *beyond the powers conferred upon it by the legislature*, is not voidable only, but wholly void and of no legal effect." * * * "When a corporation is acting within the general scope of the powers conferred upon it by the legislature, the corporation as well as persons contracting with it, may be estopped to deny that it has complied with the legal formalities which are prerequisites to its existence or action because such prerequisites might in fact have been complied with. But when the contract is beyond the powers conferred upon it by existing laws, neither the corporation nor the other party to the contest can be estopped by assenting to it, or by acting upon it, to show that it was prohibited by those laws."

The rule in these cases has no application to the case at bar. In all the cases above cited the particular transactions involved were *ultra vires* in the sense that they were beyond the scope of the powers conferred by the legislature and in the sense that *the legislative consent was wanting.* In such a case the corporation could not acquire the power even by the unanimous consent of its members. The exercise of such a power is void and could not be ratified, and it would be against public policy to apply the principle of estoppel. The present case is radically different. If the transactions during the period under consideration were *ultra vires* of the company, they were so merely in the sense that the unanimous consent thereto of the members was necessary and was wanting. Legislative consent was not wanting. The general laws under which the company was organized and operating plainly authorized the exercise of the powers which the company in fact exercised. All that was necessary in order that the powers exercised should be possessed by the company was the consent of the members to the acceptance by the corporation of the powers tendered to it by this general law, and if such consent was all that was needed, the members may clearly be estopped by their conduct to deny that the necessary consent was given.

In the case of Kent v. Quicksilver Mining Co., 78 N. Y. 159, 185, supra, it is said:

> "In the application of the doctrine of *ultra vires*, it is to be borne in mind that it has two

> phases; one where the public is concerned; one where the question is between the corporate body and the stockholders in it, or between it and its stockholders and third persons dealing with it and through it with them. When the public is concerned to restrain a corporation within the limit of the power given to it by its charter, an assent by the stockholders to the use of unauthorized power by the corporate body will be of no avail. When it is a question of the right of a stockholder to restrain the corporate body within its express or incidental powers, the stockholder may in many cases be denied, on the ground of his express assent or his intelligent though tacit consent to the corporate action."

It can make no difference in the application of these principles whether the corporation is organized under a legislative charter, or under a charter framed by the corporation under general law. If under a legislative charter, the special act creating the corporation necessarily defines its powers, and the corporation cannot exercise any powers not therein conferred. In the case of a corporation organized under a general act, the members may not insert in the articles of association nor exercise any powers not tendered in the general law. If they in fact insert in their articles or attempt to exercise a power not tendered by the general law, such acts are void, and under the rules laid down by this Court, no principle of estoppel can be invoked to make such acts effective, for the reason that legislative assent is wanting. But where, as in the case

at bar, the corporation is organized under a general law, which tenders to the corporation all powers which it in fact assumed to accept and exercise, and the only thing needful to vest the corporation with the powers in question is the consent of the members, the members may be estopped by their conduct to deny that this assent was given.

It should also be noted that the failure of the Company to solicit or write new business on the mortuary assessment plan, was not an *ultra vires act.* It was merely an ommission to exercise an admitted power; an omission induced by the best business reasons and acquiesced in by the appellants for two years or more.

V.

At this point in the case appellant Trubey becomes the only party plaintiff whose rights require further consideration. Wright is not in a position to question any acts of the company subsequent to October, 1899, or at least January 3, 1900. On learning of the changes inaugurated by the company in December, 1898, he directed the company in October, 1899, to cancel his membership certificate and stated he would look elsewhere for his insurance. He failed to pay the December, 1899, mortuary assessment, due January 3, 1900, and since October, 1899, has not exercised any of the rights nor fulfilled any of the obligations of membership.

a. By the weight of authority the contract between the member and the defendant corporation

was unilateral. The member had option of withdrawing at any time, the compensation of the company in such case being the forfeiture of the Guaranty Trust Fund deposit. The member's declaration of severance is usually his failure to pay an assessment, but there is no reason why it should not be a written declaration independent of any assessment.

Clark v. Schromeyer, 23 Ind. App. Ct. Rep. 565.

The direction given by Wright to cancel his certificate in October, 1899, terminated his membership under this rule. His right to interfere as a member in the affairs of this company was then ended.

b. If we are right in the position that the amendments of 1898, and the conduct of the Company's affairs thereunder did not constitute a breach of his contract, he was not justified in failing to pay subsequent assessments, and it necessarily follows that his membership lapsed January 3, 1900, if not sooner terminated by his action in directing the cancellation of his certificate. It is apparent therefore that appellant Wright must base his claim for relief in this case on transactions prior to January 3, 1900. He cannot question any subsequent transactions of the company. One whose membership in a corporation has been rightfully forfeited for non-payment of assessments has no right to interfere in the conduct of the corporation's affairs.

St. Louis & Sandoval Coal & Mining Co. v. Sandoval Coal and Mining Co., 116 Ill. 170.

c. The lower court further held (Rec. p. 744) in substance that assuming that the acts of the company prior to October, 1899, constituted a breach of Wright's contract, his voluntary action in cancelling his membership left him with no remedy, except an action at law to recover back money paid, and as his claim has not been reduced to judgment he has no standing in a court of equity under the rule in Scott v. Neely, 140 U. S. 106.

VI.

In the first assignment of error it is claimed that the act of 1901, under which the company qualified as an old line company is "unconstitutional." In the third assignment of error it is claimed without reference to the validity of the statute that the change was in fact a fundamental one, and constituted a breach of contract.

We assume, that the constitution referred to is that of the United States, and that the particular provision claimed to have been violated is the one forbidding States to pass any laws impairing the obligation of contracts. As the appellate jurisdiction of this court in a case like the present can be invoked only where a constitutional question is involved, it was necessary for the appellants to raise some such question. The particular obligation of appellants' contracts, which they apparently claim to have been violated by this statute is the implied one that no fundamental change in the character or purpose of the corporation could be made without

the unanimous consent of the members. It is not claimed that any express provision of their contracts has been violated.

Section 21 of the act in question provides that any insurance company, including those on the mortuary assessment plan, may qualify and be governed by the act, "*provided that nothing herein contained shall impair or operate to impair the obligation of any contract.*" The only reasonable construction to be given this act is that the legislature intended to authorize a reorganization under the act only in those cases where no contract obligation would be impaired, and withheld permission to reorganize in any case where such reorganization would operate to impair contract obligations. It is possible that the charters of some assessment companies may contain provisions which would make such a reorganization a breach of the member's contracts, and that the charters of other such companies may have been so framed as to expressly or impliedly authorize such a change. This the legislature had in mind and expressly withheld permission to qualify under the act in those cases where a contract obligation would be impaired thereby. On this view of the meaning of the statute it can hardly be claimed that the statute is obnoxious to any constitutional provision. We do not see how it can be claimed in good faith that a statute which authorizes a certain act upon the express condition that such act shall not impair a contract right, is in contravention of the provisions of the Federal Constitution referred to.

The constitutional question in this case relied on to support the jurisdiction of the court is therefore manifestly frivilous. This court might well refuse to assume *jurisdiction of this case on the ground that* the claim is fictitious.

Penn. Mut. Life Ins. Co. v. Austin, 168 U. S. 685, 695.

The real question in the case is whether or not the Minnesota statute authorized this particular company to accept its provisions, and that question in turn resolves itself into an inquiry as to whether or not, under the circumstances of this case, the reorganization of the defendant company operated as a breach of the members' contracts by making a fundamental change in the character of the corporation to which they never assented. If it did so operate, the attempted reorganization was unauthorized by the legislature. If it did not so operate the reorganization was authorized. This is not a constitutional question.

We do not see that this statute is susceptible of any other interpretation. Appellants may claim that the statute unconditionally authorizes such companies to change from the assessment to the legal reserve plan, on the vote of less than all the members of the corporation, and that the legislature merely intended to direct that all existing contracts of insurance should be carried out according to their terms, and that a statute which authorizes certain acts which *necessarily* operate to impair contract obligations cannot be saved from constitutional objec-

tions by a mere direction or declaration that no contract shall be impaired. This interpretation is a forced one, and disregards the plain language of the law.

But whatever view is taken as to the legislative intent, the ultimate inquiry, involved in the first and third assignments of error, is whether the reorganization of August 5th, 1901, made such a radical and fundamental change in the character and purpose of the defendant corporation as to require the unanimous consent of the members.

It has been repeatedly held that it is implied that every corporation which undertakes the accomplishment of a particular enterprise intends to make such changes in furtherance of the original purpose, as experience may show to be necessary for its successful operation, and that the majority of the members may bind the minority in this respect, *even though the changes were not originally contemplated nor provided for*, whenever the necessary legislative consent is obtained. The majority may bind the minority by accepting an alteration or amendment which does not radically or fundamentally change the character or general objects of the corporation, but is merely in furtherance of the objects for which the corporation was created, and conversely, the majority cannot bind the minority by accepting an alteration or amendment which will operate as a radical or fundamental change in the character or objects of the corporation.

This question has some times been raised in cases where suit was instituted by a member or stockhold-

er to enjoin a proposed fundamental change, but most frequently the principle has been relied on by the stockholders as a defense to an action on his contract of subscription, where it was claimed the purposes of the corporation had been altered after the subscription was made; and again most of the cases of the latter kind involve a state of facts where a railroad company has changed the proposed route of the railway after the subscription was made.

The general principle is clear enough, but the difficulty has been in its application to the facts of each case, and in these railroad cases some courts have no doubt been influenced to hold a change of route fundamental, by the well known fact that subscriptions to such an enterprise are frequently made by those who expect their own property to be enhanced in value by the construction of a railway along a particular line.

Following is a fairly complete list of the cases on this subject, material in illustrating what has been held to be a fundamental change. Changes that were held fundamental:

1 Natusch v. Irving, 2 Cooper's Chanc. Cases 358.

2 Ashton v. Burbank, 2 Dillon 435.

3 Proprietors of the Union Locks and Canals v. Towne, 1 N. H. 44.

4 Hartford & N. H. R. R. Co. v. Croswell, 5 Hill 383.

5 Middlesex Turnpike Corporation v. Locke, 8 Mass. 267.

6 Clearwater v. Meredith, 1 Wall. 25.

7 Bank v. City of Charlotte, 85 N. C. 433.

8 New Haven & Derby R. R. Co. v. Chapman, 38 Conn. 56, 71.

9 Kenosha, Rushford & Rock I. R. Co. v. Marsh, 17 Wis. 13.

10 Marietta, etc., R. R. Co. v. Elliott, 10 Ohio St. 57, 61.

11 Stevens v. Rutland & Burlington R. R. Co. 29 Vt. 545.

12 Winter v. Muscogee R. R. Co., 11 Ga. 438.

13 Alexander v. R. R. Co., 108 Ga. 151.

14 New Orleans, Jackson & G. N. Ry. Co. v. Harris, 27 Miss. 517.

15 Black v. Delaware & Raritan Canal Co., 24 N.J. Eq. 455.

16 Witter v. Mississippi, etc., Ry. Co., 20 Ark. 463.

Changes that were held to be not fundamental:

17 Zabriskie v. R. R., 23 How. 381, 396.

18 Buffalo & New York City R. R. Co. v. Dudley, 14 N. Y. 336, 348.

19 Irvin v. Turnpike Co., 2 Penrose & Watts 466.

20 Sprague v. Illinois River R. Co., 19 Ill. 173.

21 Banet v. The Alton & Sangamon R. R. Co., 13 Ill. 504, 511.

22 Everhart v. The West Chester & Philadelphia R. Co., 28 Pa. St. 339.

23 Cross v. Peach Botton R. Co., 90 Pa. St. 392.

24 Wilson v. The Wills Valley R. R. Co. 33 Ga. 466.

25 Gray v. Monongohela Nav. Co., 2 Watts & Serg. 156.

26 Miller v. Insurance Co., 92 Tenn. 167.

27 Payson v. Withers, 5 Biss. 269.

28 Picard v. Hughey, 58 Ohio St. 577.

See also

Freeman's note to Commonwealth v. Cullen, 53 Am. Dec. 450, 461.

Nugent v. The Supervisors, 19 Wall. 241, 248.

In Natusch v. Irving (1) the plaintiff had subscribed to the capital of The Alliance British & Foreign Fire & Life Insurance Co., a joint stock company, organized for the purpose of writing fire and life insurance. Subsequently, without the consent of plaintiff, the company's managers attempted to accept the provisions of an Act of Parliament authorizing the company to write marine insurance. It was held to be an entirely new enterprise not contemplated by the original agreement.

In Ashton v. Burbank (2) it was held: "The change in the charter by which a life and accident company was authorized to transact fire, marine and inland insurance, is an organic change of such a radical character as to discharge previous subscribers to the stock of the company from any obligation to pay their subscription, unless the change is expressly or impliedly assented to by them."

In Proprietors of the Union Locks & Canals v. Towne (3), where the charter of a corporation which

authorized it to build a dam and purchase six acres of land to render a river navigable between specified points, and to levy enough assessments on its members for that purpose, was afterwards amended so as to authorize the enlargement of the dam and the purchase of one hundred acres, in order to improve portions of the river not included within the limits of the original improvement, such change was held fundamental.

In Hartford & N. H. R. R. Co. v. Croswell (4) the defendant subscribed to the stock of a corporation whose original charter provided for the construction of a railroad from Hartford to New Haven The Court says:

> "Since entering into this contract the plaintiffs have procured an amendment of their charter by which they have superadded to their original undertaking a new and very different enterprise, and for aught that can be known, a very hazardous one—with the necessary powers to carry it into effect. Instead of confining their operations to the construction and management of their railroad between Hartford and New Haven, they have undertaken to establish and maintain a line of water communication by means of steamboats at an expense not to exceed $200,000, to all of which it is insisted the contract of the defendant has become subject, without his approbation or assent."

The Court, by Ch. J. Nelson, after holding this to be a fundamental change in the objects of the corporation, releasing the subscription, says:

> "I do not deny that alterations may be made

in the charter by the procurement of the company without changing the contract so essentially as to absolve the subscriber. Such would be the case perhaps in respect to mere formal amendments or those which are clearly enough beneficial, or at least not prejudicial to his interests. A modification of the grant may be frequently advisable, if not necessary, in order to facilitate the execution of the very object for which the company was originally established; and I admit there are intrinsic difficulties in the way of laying down any general rules by which to distinguish between the two kinds of cases. Each must depend upon its own circumstances, and be disposed of with due regard to the inviolability belonging to all private contracts."

In the Middlesex Turnpike case (5) it was held that where the directors of a turnpike corporation, with the assent of the corporation, procured an act of the legislature altering the course of the turnpike road, one who before such alteration had subscribed to the stock was released from his subscription.

In Clearwater v. Meredith (6), Clearwater had sold some land to defendants and taken in payment stock in the Short Line Railway, the defendants guaranteeing to Clearwater that the stock would be worth par at a specified date in the future. The stock not being worth that figure at the date fixed, Clearwater brought his action on the guaranty. The original act incorporating the company contained no provision authorizing the corporation to consolidate its stock with the stock of any other corporation. Prior

to the purchase by Clearwater a general statute was passed providing that "such railroad companies are authorized to merge and consolidate the stock of the respective companies making one joint stock company of the two railroads thus connected." The Short Line Railway under this statute consolidated with a second railway, making one company of the two. Plaintiff had consented to the consolidation. The Court held that the guaranty of defendants was as to the value of the stock of the Short Line Railway, not the stock of a different corporation formed by such consolidation. That the act authorizing consolidation was permissive not mandatory, and that the consolidation was a fundamental change in the corporation which could not have been carried out without plaintiff's consent, and as he had consented to the consolidation which operated to destroy the stock of the Short Line Railway, the guarantors were released. In considerating the question, the Court, through Mr. Justice Davis, says:

> "The power of the legislature to confer such authority cannot be questioned, and without the authority railroad corporations organized separately could not merge and consolidate their interests. But in conferring the authority the legislature never intended to compel a dissenting stockholder to transfer his interest, because a majority of the stockholders consented to the consolidation. Even if the legislature had manifested an obvious purpose to do so, the act would have been illegal for it would have impaired the obligation of a contract. There was no reservation of power in the act under

which the Railway was organized, which gave authority to make material changes in the purposes for which the corporation was created, and without such a reservation in no event could a dissenting stockholder be bound. When any person takes stock in a railroad corporation he has entered into a contract with the company that his interests shall be subject to the direction and control of the proper authorities of the corporation, to accomplish the object for which the company was organized. He does not agree that the improvement to which he subscribed shall be changed in its purposes and character, at the will and pleasure of a majority of the stockholders, so that new responsibilities and it may be new hazards are added to the original undertaking. He may be very willing to embark in one enterprise, and unwilling to engage in another; to assist in building a short line railway, and averse to risking his money in one having a longer line of transit. But it is not every unimportant change which would work a dissolution of the contract. It must be such a change that a new and different business is superadded to the original undertaking. The act of the legislature of Indiana allowing railroad corporations to merge and consolidate their stock was an enabling act—was permissive, not mandatory. It simply gave the consent of the legislature to whatever could lawfully be done, and which without that consent could not be done at all. By virtue of this act the consolidations in the plea stated were made. Clearwater, before the consolidation, was a stockholder in one corporation, created for a given purpose; after it he was a stock-

holder in another and different corporation, with other privileges, powers, franchises and stockholders."

In Bank v. City of Charlotte (7) it is held that the amendment of a charter of a railroad corporation, providing that its contemplated line shall be split in two and each part operated by a separate and distinct corporation, was a fundamental change.

In New Haven & Derby R. R. Co. v. Chapman (8), it is said (p. 71):

> "It is not easy to establish a general rule by which it may be seen at a glance to which class any given case belongs. Each case must in a measure depend upon its own circumstances."

In cases (8) to (16) changes more or less radical in the location of railway lines were held to be fundamental.

In Kenosha, Rushford & R. I. R. R. Co. v. Marsh (9), it was held that a law passed subsequently to the incorporation of the Railroad Company, changing the line of road to entirely different territory, made a fundamental change. The Court says:

> "It may reasonably be assumed that every association which undertakes the accomplishment of a particular enterprise intends to make such changes as experience may show to be necessary for its succesful prosecution. and if this may be assumed, then, although such changes were of course not originally provided for, yet they may fairly be regarded as so far incidental to the original purpose as to be with-

in the scope of the authority which each member has conferred upon the corporation to bind him by its action whenever the necessary legislative consent is obtained."

On the other hand

In Zabriskie v. R. R. (17), where after the organization of a railroad company a general law was passed in 1851, empowering all railway companies "at any time by means of their subscription to the capital stock of any other company or *otherwise*, to aid such company in the construction of its railroad, for the purpose of forming a connection of said last-mentioned road with the road owned by the company furnishing such aid," it was held that this act authorized the defendant railroad to guarantee the bonds of the connecting road, and the Court said:

"Both of these acts are general acts, and were designed to enlarge the faculties of these corporations, so as to promote their utility, and to enable them to accomplish with more convenience the objects of their incorporation. This act of 1851 does not divest any estate of the company, or make such a radical change in their constitution as to authorize the members to say that its adoption without their consent is a dissolution of the body."

In Buffalo & N. Y. City R. R. Co. v. Dudley (18), the original charter of the corporation authorized the construction of a railroad from Barnesville to Attica, a distance of only sixty miles. An act of the legislature accepted by the corporation amended the charter so as to authorize the extension of the road

from Attica to Buffalo, a distance of thirty-one miles, changed the name of the corporation, and increased the capital stock from $750,000 to $1 500,000. This was held not to be such a fundamental change as to relieve the subscriber to the stock of the corporation. The Court says:

> "The change is not fundamental. The new powers conferred are identical in kind with those originally given. They are enlarged merely, the general objects and purposes of the corporation remaining still the same. It may be admitted that under this reserved power to alter and repeal, the legislature would have no right to change the fundamental character of the corporation, and convert it into a different legal being, for instance a banking corporation, without absolving those who did not choose to be bound. But this they have not attempted to do."

In Payson v. Withers (27) it was held that an increase in the capital stock from $1,000,000 to $5,000,000 was not a fundamental change.

In Irvin v. Turnpike Co. (19), Gibson, C. J., held that where a pike road was badly located by the first act of incorporation, an amendment to the corporate charter making partial changes in the location was not a fundamental change.

In Banet v. The Alton & Sangamon R. Co. (21), where the charter of a railroad corporation was amended by partially changing the location of the railway, but leaving the general purpose substantially the same, the Court says:

"It follows from these authorities that an alteration in a charter may be so extensive as to work a dissolution of the contract of subscription. An amendment which essentially changes the nature or objects of the corporation will not be binding on the stockholders. A corporation formed for the purpose of constructing a railroad cannot be converted into a corporation to construct an improvement of a different character, without the consent of all the incorporators. A road intended to secure the advantages of a particular line of travel and transportation cannot be so changed as to defeat the general object. The corporation must remain substantially the same and be designed to accomplish the same general purposes, and subserve the same general interests. But such amendments of the charter as may be useful to the public and beneficial to the corporation, and which will not divert the property to new and different purposes, may be made without absolving the subscribers from their engagements."

In Sprague v. Illinois River R. Co. (20), the Court says:

"It is true that the original purpose or object of the corporaton may not be entirely changed or abandoned and a new one undertaken—such as a railroad abandoned for a canal or line of steamboats, or possibly one railroad route abandoned and another in an opposite direction, and which could have no affinity to or connection with the first, adopted; but we know of no instance where the mere limitation or enlargement of the original plan or purpose has been held not to be within the implied powers of the majority or controlling authority."

In Everhart v. The West Chester & Phila. R. Co. (22), it is held that a change in the charter of a railway company by which the corporation was authorized, for the purpose of raising means to make and equip the road as originally contemplated, to issue preferred stock, did not constitute a fundamental change.

In Cross v. Peach Bottom Ry. Co., (23), it is held that an extension in the line of the railway did not constitute a fundamental change.

In Miller v. Insurance Co. (26), an insurance company was organized with power to insure against accidental injuries to persons "in travelling." Later an act was passed authorizing it to "make insurance against disabilities to persons by sickness or disease or other bodily infirmities," disability being "incapacity." This amendment was accepted by the corporation, though not by unanimous vote of stockholders. It was claimed to be such a fundamental change as to require unanimous consent. While the case does not necessarily turn on the decision of this point, the Court says:

> "With reference to what are auxiliary amendments the cases seem in hopeless conflict. There are cases going so far as to hold that any alteration, no matter how immaterial, which in any way affects the contract between the corporation, and its stockholders is to be regarded as fundamental. The case of Zabriskie v. Hackensack 18 N. J. E. 185, is a leading case for this doctrine. But the weight of authority seems to sustain a more moderate and reasonable view,

and to support the doctrine that if the amendment does not change the character of the business, and simply authorizes its reasonable extension upon the lines of the original project, that a majority of the corporators, and in some instances the directors alone may accept and conclude all the stockholders by their action. In view of the consequence imposed by our act when an amendment is proposed, both to the corporation itself as well as to the stockholders incapable of consenting, it would seem to be the sounder rule that only very material amendments radical and vital in their character should be regarded as requiring unanimous adoption."

In Picard v. Hughey (28), it appears that the Hillsboro Gaslight Co. was originally organized with power to erect "gas works for the manufacture and sale of gas for the streets and public and private buildings of the incorporated village of Hillsboro, Ohio."

Under a statute in force providing that the charters of corporations might be amended in any way, except that no such amendment should change substantially the original purposes of the corporation, the corporation amended its articles so as to authorize it to manufacture electricity in addition to gas. The Court in holding that this amendment did not substantially change the original purposes of the corporation says of the corporation:

"The obvious purpose of its creation was to manufacture and sell light to that village and its inhabitants, but it chose, in the first instance

to ask the state for authority to furnish a particular kind of light, and that authority and no other was given. Whether at that time any other means of lighting the streets of our towns and cities were known, is not material; for whether there was or was not, the charter of this corporation then limited its right to the production and sale of gas, and of course it had no power to do anything else. In the year 1888 the corporation sought to enlarge its powers by amending its charter, and to that end applied to the state for and obtained authority to produce and sell to the same village and the same inhabitants, and for the same purpose—i. e. to light the streets, etc., of the village of Hillsboro, a different agency, known under the name of electricity. * * * The ultimate object or purpose for which each agency is employed is to provide light. Originally the Hillsboro Gaslight Company sought to accomplish this object by means of manufactured gas. Afterwards it was discovered that this object could be in some respects more satisfactorily accomplished by electricity."

However much the Courts may differ as to what in fact constitutes a fundamental change, these principles are found in all these cases.

1. *What is a fundamental change in the character and purpose of the enterprise in which the corporation is engaged is a question to be determined from the facts and circumstances of each case.*

2. *To be considered fundamental the change must be more than an alteration or modification in*

the manner and method of transacting the corporate business. There must be such a radical change in the character of the business itself, as to constitute a new enterprise.

3. *The underlying principle of the rule is that a member or stockholder may not be required to engage his capital in an enterprise to which he has never assented.*

What were the changes effected by the reorganization of August, 1901, and were these changes a fundamental departure from the purposes of the corporation?

In considering the nature and extent of the changes effected on August 5, 1901, the reorganized corporation of August 6, 1901, must be compared not with the corporation as it existed in 1880 or in 1892 or in 1898, but with the corporation as it existed on August 4, 1901. If the amendments of December 24, 1898 and the conduct of the company's affairs during the second period of its history, are held to violate appellants' contracts, this Court will never reach the question now under consideration. But if the changes of 1898 were valid and binding when made, or subsequently became so as to these appellants, by the application of the principle of estoppel, then the Court will consider the nature of the changes made on August 5 1901, and in doing so must necessarily assume that all changes in the conduct of the company's affairs made up to that time were valid. It is, therefore, a comparison between

the nature of the company's business and its powers after August 5, 1901, with its powers and the nature of its business immediately prior to that date, which must be made.

As the act of 1901 provided that any assessment company accepting its provisions should be governed solely by that act, as to all future business, the company by such acceptance relinquished the power to write assessment contracts. This affected the defendant company in the following respects:

1. It lost the power (which it still possessed after the amendments of 1898) to issue new contracts like the appellants'.

2. In all its policies thereafter issued, the "safety clause" was necessarily omitted.

3. The duty of maintaining for all its policies a legal reserve, based on the experience tables of mortality on a basis of 4 per cent, compound interest, which it had imposed on itself by contract with each holder of a Guaranteed Option Policy became a statutory obligation.

The loss of power to issue new contracts similar to appellants' meant nothing. The power was useless and had not been exercised for more than two years and a half for reasons and as the result of conditions already explained, which made it impracticable to ever again exercise it. The disuse of this power was an accomplished fact long prior to the reorganization of 1901.

Furthermore, the power of amendment contained in the articles under which Trubey's contract was written, clearly contemplated that the company

might in the future modify its plan and write all new business on a different form of contract. The mere loss of this obsolete power therefore did not of itself amount to a fundamental change in the character and purposes of the corporation, nor was it a change not provided for or contemplated in the original articles.

Nor did the mere assumption of the statutory obligation to maintain a 4 per cent reserve amount to a fundamental change. The company under its former constitution had assumed the same obligation by contract.

The only remaining change effected was the omission of the "safety clause" in policies thereafter issued. By this change the company changed the system of collecting premiums from members who thereafter became such. The liability of the members to whom policies were thereafter issued, to contribute to the company, was necessarily limited to a fixed sum. In other words instead of having the right to call on the members for additional payments in case the premiums stipulated for in the policies be insufficient, the company must depend wholly on the premiums fixed in the policy. But as the premiums provided for in the Guaranteed Option Policies were based on the mortality tables, and were substantially old line rates, and were sufficient to mature each policy, it was never contemplated that the safety clause would ever be put into operation, and by omitting it the company was deprived merely of a right which it was never contemplated would be exercised.

The actual changes effected by this reorganization of 1901 were theoretical rather than practical.

So much for the details of the changes made in this case. As the rule of law requires that the exact nature of the change shall be determined from the particular facts of each case, this seems to be the proper point of view.

Looking at the question from a somewhat broader point of view, the change from an assessment to a legal reserve company was not a fundamental one requiring unanimous consent, within the rules established by the Courts.

a. The change made was not in the character of the business, but merely in the manner of transacting it. The original purpose of the corporation, to-wit, the insurance of the lives of its members on the mutual plan, remains unchanged. It is still a mutual company. The members retain their voice in the management of the company's affairs. The character of the risks it insures against remains the same. No new enterprise has been undertaken, within the meaning of any of the decisions. The company has merely made such changes in the mode of conducting the business for which it was originally organized, as experience has shown to be desirable and necessary. It is necessarily implied that every member of a mutual insurance company shall pay the cost of his insurance. The change was merely in the time and manner of collecting this cost from the members. In its original charter the corporation adopted a particular method of collecting from its members the premiums necessary to pay for the in-

surance. Experience having shown that method inefficient, the company changed it. Instead of its members being required to pay the cost of their insurance in the form of mortuary assessments, the cost is computed in advance on mathematical principles, which experience has shown to be correct, and the cost is paid by the member in the form of level and stipulated premiums, payable at stated periods. In this way the member makes payments in advance and the company is enabled to accumulate a reserve to enable it to mature its contracts. As the company is operating on the mutual principle the surplus will presumably be returned to the members in the form of dividends.

Attention is again directed to the fact that it was never contemplated that this company should exact from its members merely sufficient payments to meet the current expenses and death claims. Its articles have always provided for the accumulation of a reserve out of the excess of mortuary assessments.

The decisions above cited hold that it is implied in the case of every corporation that the majority of its members may make such changes as experience may show to be necessary for the successful prosecution of the company's business and in furtherance of the general objects and purposes of the corporation. And that is all that has been done in this case.

In determining whether a change from the assessment to the legal reserve plan is within the implied power vested in the majority of the members of co-

operative life insurance companies the Court may properly consider what has been the universal practice and understanding in this respect in the past, with reference to which the member must be held to have contracted. That such a power exists has been the universal understanding among life insurance companies and legislative bodies, and it is a matter of common knowledge that such changes have been frequently made, and that many states have enacted laws to aid them.

b. A feature of the present case in which it differs from any of the adjudicated cases on the question of what constitutes a fundamental change, is the two-fold nature of the relation of the members to the company.

In Condon v. Mutual Reserve F. L. Ass'n, 89 Md. 99, 114, it is said:

> "The policy holder in a mutual insurance association stands in a twofold relation towards the company. He is a policy holder and he is a member. Growing out of this, as well as altogether apart from it, there is a distinct relation of creditor, but with this latter we are not concerned. He is alike insurer and insured, but in both capacities he is a member, and it is solely because he is a member that he occupies either of these positions. His liabilities as insurer and his rights as insured depend wholly upon the obligations and the conditions of his membership."

In one respect his relation to the company is anal-

ogous to that of a stockholder in that he has a voice in the government of the corporation. But his principal and only financial relation to the corporation is that of insured, and his rights and liabilities in that relation depend wholly on the terms of the particular contract of insurance which each member holds.

If a change is made in the business of a stock company, it affects equally all the stockholders. It is impracticable to provide that the business of such a company shall be of a double character, and that the new business shall be conducted merely for the benefit of the assenting stockholders, leaving the non-assenting stockholders in their original situation.

In the present case the members of the corporation were not required to accept policies on the new plan, nor was their insurance placed upon the new plan. They were given the option to transfer, but if they desired to retain their old contracts they were permitted to do so. The contracts of the members remaining on the old plan, therefore, are still assessment contracts. Their rights and obligations as expressed in their contracts have not been altered in any respect. It is only in a very limited and indirect way, that they are interested in the changes made. They have not been required to engage in any new enterprise. It is true the success or failure of the company would affect its ability to perform their contracts, but in this respect they stand in no different position than any creditor of a corporation, and we are not aware of any case in which it has been held that a contract creditor of a corporation has a

right to prevent the corporation from making even a fundamental change in the character of its business, on the ground that the change might impair the ability of the corporation to pay its debts.

c. Those cases which hold that the creation of one or more distinct corporations out of the old is a fundamental change have no application to this case. The corporate identity was never changed.

Muller v. State Life Ins. Co., 97 Indiana App. Ct. R. 45.

Miller v. English, 21 N. J. Law 317.

Wilson v. R. R. Co., 21 Gratt. 654.

d. It was argued by appellants in the court below that the original plan was shown to be a failure, and instead of modifying that plan so as to perpetuate the corporation the members had a right to insist that the company should be wound up. This argument overlooks the essential nature of a life insurance company. In the case of an ordinary business corporation where its method of conducting the business is found to be unsound, its affairs can be wound up and its shareholders permitted to withdraw the remains of their capital without hardship. In such case the dissolution of the corporation does not of itself work any financial loss, and the members may invest their capital in a more profitable enterprise. But the nature of the business of life insurance forbids such a step. The basic principle on which all life insurance companies are operated is permanency. In case of dissolution a large proportion of the members are, by reason of impaired health, ad-

vanced age, or altered financial conditions, wholly unable to procure new insurance elsewhere. The very act of dissolution therefore entails serious financial loss to many members and their families. It is for this reason that it is implied from the nature of the business that a life insurance company shall be a permanent institution. And it must be implied in the contract of the members, especially where, as in this case, amendments to the plan are contemplated in the original articles that the majority of the members shall have the power to make changes in the mode of transacting the business which are shown to be essential, to protect the interests of its members and place the company on a sound and permanent basis, and to accomplish the purposes of its organization.

In the case of Supreme Lodge Knights of Pythias v. Knight, 117 Indiana 489, the syllabus is as follows:

> "Deceased held a certificate of membership in the insurance department of an order to which he belonged. The plan of the second rank, of which he was one, provided that members should be assessed $1.00 at each death of a member, the fund thus raised being applicable only to losses in that rank. The certificate stipulated that it should be governed by the laws of the order then in force or thereafter enacted and the constitution provided that it and the by-laws should be amendable by the supreme lodge. Deceased's certificate stipulated for the payment on his death to plaintiff of $2,000.00 or if there should be less than 2,000

members of that rank, then only $1.00 for each member. The number of members increased to 16,000 when by amendment of the constitution and by-laws, a new rank was established with an assessment based on life expectancy, which was preferable to the second rank for young, but more expensive for old men, and the younger members of the second rank were transferred so that at deceased's death, three years later, only 173 members of the second rank remained, he having in the nine years of his membership paid in $240.00. The new scheme was adopted in good faith to benefit the order in general. Both deceased and plaintiff upon learning of the new scheme, notified the Supreme Lodge that they protested against it. Held, that the change was not a violation of the contract, and within the scope of defendant's powers, and that plaintiff could recover only $173.00 on his certificate."

While this Indiana case goes much further than it necessary to go in the case at bar, the principles applied by the court are applicable here and are stated as follows (p. 491):

"The third paragraph of the complaint * * * proceeds on the theory that the governing body of the order, by establishing a new class and offering more advantageous terms to members of the order who would enter it, so depleted the class to which the assured belonged as to reduce the value of the certificate to $173.00 and for that reason the appellee is entitled to recover the difference between the value of the policy represented by the members that remained in the class and the maximum sum

named in the certificate." * * *

"It (the answer) avers that the constitution and by-laws were changed by the representatives of the members of the order so as to create a fourth or graded class, and that these amendments were made at a regular session of the governing body of the fraternity. * * * It alleges that the amendments were made in conformity to the constitution and by-laws and in good faith, and for the best interests of the order" (p. 493). * * *

"There was no bad faith. There was on the contrary a purpose to advance the interests of the order and the means chosen to effect that purpose were not founded on a mere arbitrary exercise of power, for very substantial and very good reasons support the action of the order in changing the system of insurance. All things indicate good faith and an honest purpose"; (p. 495) * * *

"Associations and corporations have a right to change their by-laws when the welfare of the corporation or association requires it and it is not forbidden by the organic law. The duly chosen and authorized representatives of the members alone are vested with the power of determining when a change is demanded, and with their discretion, courts cannot interfere. Were it otherwise, courts would control all benevolent associations, all corporations, all fraternities. It is only where there is an abuse of discretion, and a clear unreasonable and arbitrary invasion of private rights, that courts will assume jurisdiction over such societies and corporations. With questions of policy, doctrine or discipline, courts will not interfere" (p. 497). * * *

"To justify interference by the courts and warrant the overthrow of by-laws enacted in the mode prescribed by the by-laws it must be shown that there was an abuse of discretion or that the by-law is so unreasonable as to be void. *We do not affirm that a benefit society may by a change in its by-laws arbitrarily repudiate an obligation created by a policy of insurance; but we do affirm that where a change is regularly made in its by-laws and the motive which influenced the change is an honest one to promote the welfare of the society, and the members are all given an opportunity to avail themselves of the change no actionable wrong is done the members or their beneficiaries.* It may sometimes happen that the interests of an individual or of a few individuals may be impaired, but it is the right, and indeed it is the duty of the society to protect the interests of the many rather than of the few. Persons who become members of such societies must take notice of this, and one person cannot therefore demand that the welfare of the society and the interests of the many be sacrificed for his sole benefit. In the case before us, the change from one plan to another was not an arbitrary or unreasonable exercise of power; nor was it the repudiation of a debt, nor the destruction of a vested right; it was not unreasonable because it may well be that the system of insurance originally adopted which gave no heed to age, was so infirm as to be incapable of long endurance. It was not arbitrary because the by-laws reserved the right of amendment and a desire to promote the welfare of the society brought about the change. It was not the repudiation of a debt, because the

right to the avails of assessment provided for by contract was not taken away," etc.

In using the word "by-law," the Court referred to the constitution framed by the corporation.

c. It may be urged that the implied power to amend the corporate charter was vested in a majority of the members, and that the statute of 1901 authorized the reorganization by a two-thirds vote of all votes cast at the meeting, which might under certain conditions be less than a majority of all the members, and that for this reason the statute is invalid.

This argument is based on a misconception of the purpose and meaning of the statute. It is merely an enabling act. The implied power of the majority to make changes in the charter of the corporation in furtherance of its general purposes was not created by this statute. It has always been a part of the contract of the members. As between themselves this power has existed from the date of the organization of the corporation. The legislative consent may have been necessary to its exercise, and this statute was enacted not for the purpose of creating such a power, but merely to give legislative consent to its exercise. The adoption of a resolution of incorporation by a two-thirds vote of all votes cast satisfies the condition precedent which the legislature imposed as between the corporation and the state. The statute, however, provided that nothing therein contained shall impair or operate to impair the obligation of any contract. The plain

meaning of this provision is that the corporation should not only comply with the conditions prescribed by the legislature, but should also comply with the terms of the contract between the members. If, therefore, the contracts between the members and the corporation required that these amendments must be adopted by a majority of all the members it was the legislative intent that the consent of a majority of the members should be obtained. That was done in this case. The number of votes cast in favor of this amendment represented more than a majority of the members. In making these amendments, therefore, the corporation complied with the conditions prescribed by the State, because two-thirds of all votes cast were in favor of the amendment, and it also complied with the requirements of the members' contracts, and with that provision of the statute which stated that no contract should be impaired because a majority of all the members voted in favor of the reorganization.

But if this interpretation be not accepted the appellants are not in a position to attack the validity of the statute on this ground. It is apparent that two-thirds of all the votes cast at a meeting might under some conditions represent less than a majority of all the members. It is equally clear that under other conditions two-thirds of all the votes cast at a meeting might represent more than a majority of all the members, in which case the legislative requirement would be more severe than that implied in the contracts of the members. It follows that the legislative requirement in regard to the number

of votes necessary to effect a reorganization does not necessarily give the power to reorganize to less than a majority of all the members. Under certain conditions only it might so operate. Under the facts of the present case it did not so operate. The legislative requirements of a two-thirds vote exceeded the requirement implied in the members' contracts.

It is well settled that no individual has a right to attack the validity of a statute unless his own rights have been impaired by it. The appellants may not attack the validity of this statute because it might, under certain conditions, and in some other case, operate to impair the rights of other individuals.

Cooley's Consitutional Limitations, 5th Ed. page 197.

Hartford Fire Ins. Co. v. Perkins, 125 Fed. 502.

f. If the law of 1901 should be interpreted to unconditionally authorize the change from the assessment to the legal reserve plan, on vote of less than all the members, this case would then turn on the validity of such legislation.

While this statute is permissive, not mandatory, in its provisions, it may nevertheless be considered an exercise by the state of its police power over financial institutions in which the public are generally interested.

Black v. Delaware & Raritan Canal Co., 24 N. J. E. 455, 472.

To make such legislation mandatory would be to legislate some companies into statutory insolvency.

The power of legislatures to regulate the business of insurance is undoubted.

Chicago Life Ins. Co. v. Needles, 113 U. S. 574.

The courts have generally upheld the validity of laws which prescribe the exact terms which all contracts of fire insurance shall contain, and the statute books of the various states contain laws regulating to a greater or less extent the nature and terms of life insurance contracts. The business of assessment insurance has been prohibited entirely by Massachusetts.

In the solvency and stability of life insurance companies the public have a large interest. Next to the banking institutions they are the most important financial organizations in the country. The general failure of a number of life insurance companies would be a financial disaster only exceeded by the general failure of banks. Within the last quarter of a century a large number of assessment or co-operative life insurance companies were organized in this country. Hundreds of millions of insurance contracts were issued by them. For some years they were successful, but the plan was shown to be unsound in practice, and numbers of these companies became insolvent, and many more were threatened with a similar fate. The legislatures of many of the states recognized the situation and adopted legislation to remedy this condition by enabling the companies to go on the "old line" basis, by a partial vote of their members. Statutes similar to the Minne-

sota law are in force in

Indiana (Sections 4894 Ll, 4894 ml, 4894 nl. Vol. 2, Burns Ann. Ind. Stat. Rev. of 1901.)

Iowa (Code of Iowa, Sec. 1784 j) Supplement of 1902.

Mass. § 65 ch. 118, p. 1152, Vol. 2, Revised Laws of 1902; paragraph 4th. Sec. 11, Ch. 118, p. 1124.

Michigan (Compiled Laws of 1897, § 7204).

Missouri (Sec. 7930, Revised Statutes 1899).

New Jersey (Chapter 7, Laws of 1899).

New York (§ 52, Chapter 690, Laws of 1892, as amended by Chap. 725, Laws of 1893, and Chapter 722 Laws of 1901).

Ohio (Sec. 3631—27 Annotated Statutes Bates' 4th Ed).

Wisconsin (§ 4, Chapter 270, Laws of 1899).

Under these laws, as is shown by the testimony of Actuary Wolfe, a large number of companies have gone onto the legal reserve basis, and have gone through substantially the same transition as has the defendant company. So far as we have been able to ascertain, the validity of such statutes and of the change of plan made under them has never before been questioned. For this court to declare the Minnesota statute unconstitutional, or the change of plan made thereunder a fundamental change in the purpose of the corporation, requiring unanimous consent of the members, would be to dissolve not only the fifteen or twenty millions of insurance contracts issued by the defendant company, but would

inevitably lead to the dissolution of hundreds of millions of insurance contracts issued by other companies under similar statutes. The institution of suits like the present one would become a profitable industry.

VII.

The only relief demanded in this suit is the dissolution of defendant corporation, the sequestration of its assets, and the appointment of a receiver for that purpose, in other words, the "winding up" of the corporation. No other relief could be granted and none other was asked for in the lower court; and we assume that is what will be asked of this court. It is plain no other relief would accomplish the purpose for which this suit was instituted, or produce the returns desired by the appellants.

The changes complained of were accomplished before the commencement of this suit, and the time for an injunction is passed. Furthermore this company has gone too far in its present course to retrace its steps. To enjoin the further prosecution of its business on the present plan would put the affairs of the company in hopeless confusion, and the necessary effect of such a decree would be to require the appointment of a receiver to wind up its affairs.

a. Has the lower court or this court any jurisdiction to grant this relief?

It is well settled that a court of equity has no inherent jurisdiction to wind up and dissolve a corporation and sequestrate its assets for that purpose

at the suit of a member or stockholder. The jurisdiction of a court of equity relating to receivers of corporations, in the absence of express statutory authority, is confined to the appointment of receivers to apply the corporate assets to the satisfaction of the claims of creditors, where the claims have been reduced to judgment, and execution has been returned unsatisfied, which proceeding is in the nature of an equitable execution; or to the appointment of a receiver pendente lite, to preserve the corporate property pending the litigation, which is a mere auxiliary remedy.

High on Receivers, Sec. 288, 3rd Ed.
U. S. Trust Co. v. R. R. Co., 101 N. Y. 478, 483
Republican Silver Mines v. Brown, 58 Fed. 644-648, S. C. 7 C. C. A. 412.
Strong v. McCagg, 55 Wis. 624.
Hinckley v. Pfister, 83 Wis. 64, 84.

The jurisdiction now frequently exercised by courts of equity to wind up and dissolve corporations and sequestrate their assets at the suit of stockholders, and appoint receivers to divide the assets among creditors and stockholders, it derived entirely from express statutory provisions. In the absence of such statute the jurisdiction of a court of equity never extended to winding up a corporation and appointing a receiver for that purpose, *at the suit of a member or stockholder*. If the Circuit Court had any jurisdiction to grant the relief asked for in this case, it can only be by express statutory enactment.

There is no act of Congress nor statute of Minne-

sota which has enlarged the equity jurisdiction of the United States Circuit Court in Minnesota so as to authorize the relief asked for in this case. The only Minnesota statutes relating to this subject are found in Sections 5889 to 5911, General Statutes of 1894.

(The Insurance Code of Minnesota,—Sections 7 and 8 of Chapter 175, General Laws of 1895,—empowers and directs the Insurance Commissioner and Attorney General to institute proceedings to wind up domestic insurance companies which become insolvent or violate the law, or exceed their powers. This statute does not affect the present case, unless indeed the power thus vested in the insurance commissioner was intended to be exclusive.) We refrain from quoting these sections at length, as under the rules of this Court the appellants are required to set it forth in their brief if they rely upon it.

Section 5897 provides that on the complaint of a creditor whose claim has been reduced to judgment, upon which an execution has issued and been returned unsatisfied, the District Court may appoint a receiver and sequestrate the corporate assets. This provision does not cover this case nor create a new remedy.

Section 5899 relates to actions instituted by the Attorney General to forfeit franchises of railroad and other corporations.

Section 5900, et seq., relating to banking and insurance corporations, provides that whenever such a corporation becomes insolvent, or fails to pay its

evidences of debt on demand, or violates any of the provisions of its act or acts of incorporation, or any other law binding on such corporation, proceedings may be instituted to enjoin the further prosecution of its business, to wind up the corporation and sequestrate its assets by the appointment of a receiver, and that such suit may be instituted by the attorney general in behalf of the state, or on complaint of "any creditor or stockholder."

It is plain under the rule in Scott v. Neely, supra, that insofar as this statute gives such remedy to a general creditor, it cannot be enforced in the federal courts and whether any remedies given by it may be enforced in those tribunals is a matter of grave doubt for several reasons. But assuming that the remedy there granted to a stockholder might be enforced in the federal courts, and that a member of a mutual company is a "stockholder," the statute has no application to the present case. The defendant corporation is not insolvent, nor has it refused to pay any debt on demand. It is apparent also, considering all the provisions of the act together, that the words "violate any of the provisions of its act or acts of incorporation, *or any other law* binding on such corporation," only have reference to a violation of the statutes of the state under which the corporation is organized, or any other *statute* binding on the corporation, the penalty for which would be a forfeiture of its corporate franchises, and the dissolution for this reason if for a *wrong against the state*, which the attorney general may take advantage of. This corporation has never violated the

law under which it was incorporated, nor any other law, nor committed any wrong against the state. *It has had legislative* consent to all its acts. The wrong, if any, which appellants have suffered can be nothing more than a breach of their contract with the corporation.

As the statute in question only authorizes the winding up of a moneyed corporation at the suit of a stockholder, for insolvency or violation of state law, and as no such conditions exist in this case, the jurisdiction of the lower court does not extend to granting the relief asked for.

b. There are two other considerations which should impel this court to deny relief in this case:

1. The appellant Trubey has a remedy at law, which seems to be adequate, as that term is used in equity. By reason of the twofold nature of the member's relation to the company, already referred to, if his contract has been broken he is a creditor of the company.

The rule is well established that the relation between a mutual insurance company and its members is that of contract, and where the company fails or refuses to carry out its contract the insured may sue at law for damages.

Ebert v. Mut. Res. Fund Life Assn., 81 Minn. 116.

Watts v. Phoenix Mut. Life Ins. Co., 16 Blatch. 228.

Smith v. St. Louis Mut. Life Ins. Co., 2 Tenn. Ch. 727, 741.

Speer v. Phoenix Mut. Life Ins. Co., 43 Hun. 322.

If Trubey in his capacity as a member had instituted a suit to enjoin the contemplated changes, in time to make that remedy effective, it may be that his right to maintain an action at law for damages in the event that the changes were made, would not have been considered an adequate remedy nor a satisfactory substitute for the injunction. But where the remedy by injunction is no longer available, that remedy at law is adequate. If a receiver is appointed Trubey can merely file his claim as a policy holder against the corporate assets. In an action at law, if his contract has been broken, he would recover the value of the policy at the time of the breach. In either case the financial result would be the same, leaving out of consideration the profit he expects to derive from being interested in the conduct of a receivership proceeding.

2. The other consideration is the character of this litigation. It is a disagreeable subject and we need only refer the court to the records, the statement of facts, and the opinion of the court below. We established the fact that this is what is commonly described as a "wrecking suit," instituted by an insignificant interest, in reckless disregard of the interest and wishes of the members of the company. That Trubey is the only member now in good standing, and who was so at the time of the reorganization of 1901, back of this litigation, was convincingly shown. The head and front of the whole proceeding is the man Carter, described by the lower court as a "dishonest rascal," and who never has

been a member. Some of Carter's acts set forth in the testimony undoubtedly were performed before Trubey and his present associates became interested in his scheme. This testimony was introduced on the theory that there was a continuing conspiracy to wreck this company, and that as Carter is still the "chief conspirator" as he called himself, his former acts in furtherance of this purpose are competent to characterize the present combination, and that by joining with him the others adopted the acts already perpetrated in furtherance of the common design. This defense goes to the equity of complainants' case, and like the defense of laches need not be pleaded.

Willard v. Wood, 164 U. S. 502, 524.
Sullivan v. R. R., 94 U. S. 806, 811.
Badger v. Badger, 2 Wall. 87, 95.

We are aware that courts will not consider a man's motive for the enforcement of a strict legal right. But it is not a strict legal right which it is sought to enforce in this case. The appellants have appealed to the equity side of this court and asked not for the enforcement of a strict legal right, but for the exercise by this court of its extraordinary powers as a court of equity. The appointment of a receiver is always a matter of sound discretion, and it is elementary that a court of equity will never exercise such an extraordinary power where great hardship and injustice would result, especially where, as in this case, the complainants has a remedy at law, the enforcement of which would injure no one.

Considering the origin and original purpose of the equitable jurisdiction it seems impossible that there can be any principle of equity which will make it necessary for this court to become the instrument to accomplish the purpose of this litigation, and do irreparable damage to thousands of members, at the suit of such a band as are behind this litigation.

See Dimpfell v. Ohio & Miss. Ry. Co., 110 U. S. 209.

In view of the existence of this other remedy, and the general nature of this suit, and the bad faith of the parties behind it, no equitable relief should be granted, even if any technical infringement of strict legal rights has occurred.

It was intended to consider at some length the effect of Trubey's reinstatement on the prior acts of the company, but this brief has already reached such a length that it is inadvisable. It may be said, however, that the reinstatement, based on new warranties as to health, constituted a new contract, and made with knowledge of all changes in the corporation amounted to a ratification, on the same principle that a member cannot question the validity of articles and by-laws in force at the time his membership begins.

WILLIAM D. MITCHELL,
Solicitor for Appellees.

JARED HOW,
CARL TAYLOR,
TIMOTHY R. PALMER,
Of Counsel.

APPENDIX.

Chapter 184 General Laws of 1885.

An Act to provide for incorporation and regulation of co-operative or assessment life, endowment and casualty insurance associations and societies.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Any number of persons, not less than nine (9), residents of the State of Minnesota, hereafter desiring to form an organization, fraternal or non-fraternal, for the purpose of transacting the business of life, casualty, or endowment, or both life, casualty and endowment insurance upon the co-operative or assessment plan, may associate themselves together, and effect such organization as hereinafter prescribed, and not otherwise.

Sec. 2. Such persons shall file in the office of the insurance commissioner a declaration, signed by each of the corporators, and duly acknowledged before an officer authorized under the laws of this state to take the acknowledgment of deeds and shall therein express their intention to form an organization for the transaction of life, endowment or casualty insurance, upon the co-operative or assessment plan, which said declaration shall also contain the proposed name of the association, corporation or society (which shall not be the same as, nor too closely resemble the name of, any other corporation, organ-

ized under the laws of this state), the place where the principal office for the transaction of its business shall be located, which shall be at some place within this state; the mode, and manner in which the corporate powers granted by this act are to be exercised; the mode and manner of electing the trustees, directors or representatives, or other persons, by whatsoever name or title designated, who are to have and exercise the general control and management of its affairs and all its funds; which election shall be in such manner as shall be prescribed by the by-laws of such corporation, association or society, or in case of fraternal societies, by representatives chosen by subordinate lodges, councils or bodies, who shall be members of such society and a majority of them citizens of this state.

* * * *

Sec. 5. Any corporation, association or society which issues any certificate, policy or other evidence of interest to, or makes any promise or agreement with its members, whereby upon the decease of a member, or the maturity of a certificate, any money or other benefit, charity, relief or aid is to be paid, provided or rendered by such corporation, association or society, to the legal representatives of such member, or to the beneficiary designated by such member, which money, benefit, charity, relief, or aid are derived from voluntary donations or from admission fees, dues and assessments, or any of them, collected or to be collected from the members thereof or members of a class therein, and interest and accre-

tions thereon or rebates from amounts payable to beneficiaries or heirs; and wherein the paying, providing or rendering of such money or other benefit, charity, relief or aid is conditioned upon the same being realized in the manner aforesaid; and wherein the money or other benefit charity, relief or aid so realized is applied to the uses and purposes of such corporation, association or society, and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of life or endowment insurance upon the co-operative or assessment plan, and shall be subject only to the provisions of this act.

* * *

Sec. 7. Every such corporation, association or society doing a life, endowment or casualty insurance business upon the co-operative or assessment plan, as herein defined, shall, on or before the first (1st) day of February of each year, make and file with the commissioner of insurance of this state a report of its affairs and its operations during the year ending on the thirty-first (31st) day of December immediately preceding. Such reports shall be upon blank forms provided by such commissioner, and shall be verified under oath by the duly authorized officers of such corporations, associations, or societies, and shall be published, or the substance thereof, in his annual report, by such commissioner, and shall contain answers to the following questions:

* * *

Fifth—The amount received from each assessment

in each class for the year.

* * *

Nineteenth—Has the society a reserve fund?

Twentieth—If so, how is it created, and for what purpose, the amount thereof, and how invested?

Twenty-first—Has the society more than one class or division?

Twenty-second—If so, how many, and the amount of indemnity in each.

Twenty-third—Number of members in each class or division.

* * *

Twenty-eighth—Aggregate maximum and minimum and average age of membership in each class or division in the society.

* * *

Sec. 19. * * * Nor shall anything in this act prevent the creation of a reserve fund by any corporation, association, or society transacting the business of life, endowment or casualty insurance upon the co-operative or assessment plan, which funds or its accretions, or both, are to be used for the payment of assessments or death losses, or for benefits. * *

CHAPTER 143 GENERAL LAWS OF 1901.

An act to amend Chapter 175 of the General Laws of 1895, entitled an Act to revise and codify the insurance laws of the state."

Be it enacted by the legislature of the State of Minnesota:

Section 1. That sections eleven (11), twenty-one (21), twenty-four (24), twenty-seven (27), twenty-eight (28), thirty-two (32), sixty-three (63), and seventy-three (73) of chapter 175 of the General Laws of 1895, be amended to read as follows:

Section 11. He shall each year compute the net value on the thirty-first day of December of the preceding year of all outstanding policies of life insurance in companies authorized to make insurance on lives in this state upon the basis of the American Experience Table of Mortality, with the interest at *four* per cent per annum, and the aggregate net value, so ascertained, of the policies of any such company shall be deemed its liability on account of its policy obligations, other than accrued claims, to provide for which it shall hold assets in secure investments of an amount equal to such net value above all its other liabilities; *and in computing such net value he shall treat and construe each policy, according to the terms and tenor thereof; provided, that policies, or certificates of any assessment company, issued on the mortuary assessment plan, prior to the reincorporation of such company, or the au-*

thorization thereof to transact life insurance business, under the provisions of this act, shall at all times after such reincorporation or authorization, be treated and valued as one year term policies. When the actual premium charged by a company for an insurance is less than the net premium for such insurance computed according to the table of mortality and the rate of interest aforesaid, then and in every such case the company shall be charged as a separate liability with the value of an annuity, the amount of which shall equal the difference between the premium aforesaid and the term of which in years shall equal the number of future annual payments due on said insurance at the date of the valuation. *Provided, however*, he may accept the valuations made by the insurance commissioner of the state under whose authority a life insurance company was organized, when such valuations have been made on sound and recognized principles and legal basis, or its equivalent as above; *provided*, the company shall furnish to the insurance commissioner of this state a certificate from the insurance commissioner of such state, setting forth the value calculated, on the date designated above, of all the policies in force in the company on the previous thirty-first day of December. Every life insurance company doing business in this state during the year for which the statement is made that fails to promptly furnish the certificate aforesaid shall be required to make full detailed lists of policies and securities to the insurance commissioner of this state, and shall be liable for all charges and expenses consequent upon

not having furnished such certificate. To determine the liability on the contracts of insurance of an insurance company, other than life, and real estate title insurance, and thence the amount such company shall hold as reserve for the reinsurance, he may take fifty per cent or the actual unearned portion of the premiums written in its policies; but in respect to inland and marine risks he shall compute the liability thereon by charging sixty per cent of the amount of premiums written in its policies upon yearly risks and upon risks covering more than one passage not terminated, and the full amount of premiums written in policies upon all other inland and marine risks not terminated. *Provided*, that in case of fire and marine insurance companies with less than two hundred thousand dollars capital admitted to transact fire insurance only in this state, the full amount of premiums written in their marine and inland navigation and transportation insurance policies shall be charged as liability.

In valuing the assets, except cash in hand, which compose the legal reserve of a life insurance company, the real estate, the bonds and stocks shall be taken at such a value that the average annul income thereof shall be not less than three per cent of the valuation; and if any asset or investment is conditioned upon a rate of interest of less than three per cent annually such asset or investment shall be rated at its value, considering the actual income, and time it has to run, as the equivalent of a three per cent investment; loans and credits shall not be allowed for more than their face value, nor shall any asset or

investment be appraised for more than its market value. He shall allow to the credit of an insurance company in the account of its financial condition, only such assets as are available for the payment of losses in Minnesota, but may credit any deposits or funds of the company set apart as security for a particular liability in set-off to the amount charged on account of such liability; *also the amount of any lawful interest-bearing lien against, or loan upon any policy, to the extent of but not exceeding the net value or premium reserve of such policy, computed as by this act provided.* He shall not allow stockholders' obligations of any description as part of the assets or capital of any stock insurance company unless the same are secured by competent collateral or mortgages on real estate.

Sec. 21. The general provisions of law relative to the powers, duties and liabilities of corporations or their agents shall apply to all incorporated insurance companies as far as the provisions are pertinent and not in conflict with the provisions of law relative to such companies or with their charters.

Any insurance company, *not excepting companies transacting life or casualty business on the mortuary assessment and stipulated premium plan, or either thereof, may qualify and* be governed by this chapter, anything in its special charter to the contrary notwithstanding. *Provided that nothing herein contained shall impair or operate to impair the obligation of any contract, and provided further, that after such qualification the company qualify-*

ing shall be governed solely by this act; and provided further, that nothing in this act contained shall apply to any town insurance, mortuary assessment, or stipulated premium company, unless and until it shall accept and qualify under the provisions hereof; and provided further, that notice of the acceptance of said act be filed with the insurance commissioner.

Sec. 24. Any such company may adopt by-laws for the conduct of its business not repugnant to law nor to its charter, and therein may provide for the division of its board of directors into two, three, four or more classes, and the election thereof at its annual meetings, in such manner as that the members of one class only shall retire and their successors be chosen each year, or at such other time or times as the by-laws may prescribe. Vacancies in any such class may be filled by election by the board for the unexpired term. The secretary and treasurer shall severally give bonds with sureties, in such sum as the directors may require, for the faithful performance of their respective duties.

All matters proposed to be acted upon at any special meeting of the company shall be specified in the call for the same.

All investments of the funds of the company shall be made in its corporate name, and no officer of the company and no member of the committee thereof charged with the duty of investing its funds, shall borrow the same, or be directly or indirectly liable for or on account of loans thereof to others; nor shall

any director or other officer take or receive to his own use any fee, brokerage, commission, gift, or other consideration for or on account of a loan made by or on behalf of such company.

All policies issued by such company shall be signed by its secretary, or, in his absence, by a secretary pro tempore, and by its president or vice president, or, in their absence by two directors.

Such companies shall have their office in the city or town specified in their charter, and when they establish agencies in other cities or towns, all signs, cards, pamphlets and advertisements exhibited or issued by them shall specify the city or town where the company they represent is located. They shall not deal or trade in buying or selling goods, wares or merchandise, except articles insured by them on which losses are claimed, and except in replacing, rebuilding or repairing insured property, as provided in their policies, nor engage in any business other than as specified in their charters and articles of incorporation and expressly authorized by law.

Any such company may acquire and hold real estate for the convenience and accommodation of its business at a cost not exceeding twenty-five per cent of its cash assets and not otherwise, but may hold real estate acquired under the conditions of any mortgage owned by it, or by purchase or set-off on execution, upon judgment for debts due it in the course of its legitimate business.

Sec. 27. Insurance companies may be formed

or reincorporated as provided in section twenty-eight for any one of the following purposes, to-wit:

First: To insure against loss or damage to property by fire, lightning, hail or tempest on land, upon the stock or mutual plan.

Second: To make insurance upon the lives of individuals, and every insurance appertaining thereto or connected therewith upon the stock or mutual plan, and to grant, purchase or dispose of annuities and endowments of any kind. *Provided*, no company transacting the business of life insurance in this state shall be permitted to take any other kinds of risks except those connected with or appertaining to making insurance on life or against accident to, or sickness of, persons, and the granting, purchasing and disposing of annuities and endowments.

Third: To insure upon the stock or mutual plan, vessels, freight, goods, money, effects, and money lent on bottomry or respondentia, against the perils of the sea and other perils usually insured against by marine insurance, including risks of inland navigation and transportation.

Fourth: To guaranty the fidelity of persons in positions of trust, private or public, and to act as surety on official bonds, and for the performance of other obligations.

Fifth: To insure against loss or damage to the property of the assured, or loss or damage to the life, person or property of another for which the as-

sured is liable, caused by the explosion of steam boilers.

Sixth: To insure any person against sickness or against bodily injury or death by accident; or any person, firm or corporation against loss or damage on account of the bodily injury or death by accident of any person for which loss or damage said person, firm or corporation is responsible.

Seventh: To insure against a breakage of plate glass, local or transit.

Eighth: To insure against loss by burglary or theft, or both, or attempt thereat, or loss of money or securities in course of transportation.

Ninth: To insure against loss or damage to property of the assured by water, caused by accidental breakage of automatic sprinkler heads.

Tenth: To insure against loss or damage to live stock of the assured caused by death of the property insured.

Sec. 28. The procedure for organizing or *reincorporating* such a corporation shall be as follows:

First: *To organize a company* the proposed incorporators must be residents of this state, and not less than ten in number and shall subscribe and duly acknowledge before some officer authorized to take acknowledgments to deeds, articles of association, setting forth their intention to form a corporation; its proposed name, which must not so closely resem-

ble the name of an existing corporation authorized to transact business in this state as to be likely to mislead the public, and must be approved by the insurance commissioner; the class of insurance it proposes to transact, and on what business plan or principle; the place within this state of its location, or home office; and, if on the stock plan, the amount of its capital stock; also any additional suitable and lawful declarations or matters the said incorporators may see fit to embody therein.

Second: *Any domestic insurance company, not excepting those transacting life or casualty insurance, business on the mortuary assessment plan and stipulated premium plan, or on either thereof, may at any time qualify and reincorporate under the provisions of this act, either as a stock company, if a stock company at the time of reincorporation, or as a mutual company, if a mutual company at the time of reincorporation, retaining or adopting any name consistent herewith and approved by the insurance commissioner.*

To accomplish such reincorporation a resolution shall be adopted by a majority vote of all the votes cast by the stockholders of a stock company, or by a two thirds vote of all the votes cast by the members of any other company, at any special meeting called for that purpose, of the holding of which not less than thirty days' written or printed notice, specifying the time and place, shall have been given, or by such majority vote or two thirds vote as the case may be, at any regular meeting of such stock-

holders or members, authorizing and declaring such reincorporation, and setting forth the future corporate name of such company, which must not so closely resemble the name of an existing corporation authorized to transact business in this state as to be likely to mislead the public, and must be approved by the insurance commissioner; the class of insurance it proposes to transact, and on what business plan or principle; the place within this state of its location, or home office; and if on the stock plan, the amount of its capital stock; also any additional suitable and lawful declarations or matters the said voters may see fit to incorporate therein.

Third: The words "insurance company" must be a part of the name or title of any company organized *or reincorporated* under the provisions of this act; also the word "mutual" if organized *or reincorporated* on the mutual plan or principle. The articles of incorporation *or resolution of reincorporation*, shall also fix the place, day and hour of holding the first meeting of members or stockholders to be held thereafter, also the place, day and hour of holding the regular annual meeting of the members or stockholders, and the names of the first, or of the present, board of directors or trustees.

In case of reincorporation a full, true and complete copy, certified by the president and secretary, under the corporate seal of the company, or the resolution adopted as herein provided, and in case of organization, the articles of incorporation executed and acknowledged as herein provided, shall be sub-

mitted to and filed with the insurance commissioner, who shall, if it appears that the requirements of the law as herein have been complied with, cause such articles of incorporation, or certified copy of resolutions, as the case may be, to be recorded in a book kept for that purpose in his office, and thereupon such articles of incorporation, or certified copy of resolution, as the case may be, shall constitute and thereafter be known as the articles of incorporation of the company, subject to amendment as herein provided; and if said company shall possess the necessary qualifications, and shall have complied with all the requirements of law, said commissioner shall, without unnecessary delay, issue to such company his certificate of authority, authorizing it to do the business mentioned in its articles of incorporation in this state. The insurance commmissioner shall sign said certificate and cause the seal of his office to be thereto affixed. He shall also keep a copy of such certificate, and a certified copy of the same may be given in evidence with the like effect as the original certificate.

Any company reincorporated as herein provided shall upon such reincorporation and for the purpose of construing this act, be treated and deemed to have been formed or organized hereunder. Except as otherwise herein provided, the then, at the time of such reincorporation, existing board of directors, or board of trustees and officers of any company reincorporated under this act, shall hold office until their respective successors are elected and have qualified.

Any company organized *or reincorporated* under the provisions of this act may amend its articles of incorporation at any time, to any extent, not in violation of law, by resolution adopted by a majority vote of all the votes cast by the stockholders of a stock company, or by a two-thirds vote of all the votes cast by the members of any other company, at any special meeting called for that purpose, of the holding of which not less than thirty days' written or printed notice, specifying the time and place shall have been given, or by such majority vote or two-thirds vote, as the case may be, at any regular meeting of such stockholders or members.

A full, true and complete copy, certified by the president and secretary, under the corporate seal of the company, of any resolution of amendment, or amendments, herein authorized, shall be submitted to and filed with the insurance commissioner, who, if it appears that the requirements of law as herein have been complied with shall, without unnecessary delay, record such certified copy of resolution of amendment, or amendments, in a book kept for the record of articles of incorporation, and thereupon such amendment or amendments shall be in force and effective.

Sec. 32. (Relates to stock companies and investment of funds and is omitted as immaterial).

Sec. 63. All corporations, associations, partnerships or individuals doing business in this state under any charter, compact, agreement or statute of this or any other state, except as provided in section three, involving the payment of money or other

things of value, to families or representatives of policy and certificate holders or members, conditioned upon the continuance or cessation of human life, or involving an insurance guaranty contract or pledge for the payment of endowments or annuities, shall be deemed to be life insurance companies, and shall not make any such insurance guaranty, contract or pledge in this state, or to or with any citizen or resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment and the consideration therefor, nor the performance of which is contingent upon the payment of assessments made upon survivors; *provided, that nothing in this section contained shall apply to any contract, policy or certificate of membership issued by any corporation or company while transacting the business of life insurance on the mortuary assessment plan and stipulated premium plan, or either thereof, prior to receiving authority to transact life insurance business under the provisions of this act, but such contracts, policies and certificates shall be fulfilled and carried out according to the terms and conditions of each thereof, subject to change by the parties thereto.*

Sec. 73. Every person insured by a domestic mutual life insurance company shall be a member, entitled to one vote, and one vote additional for each *one* thousand dollars of insurance in excess of the first *one* thousand dollars, and shall be notified of its annual meetings by a written notice, or by an imprint in the form prescribed in section thirty-

seven upon the back of each policy, receipt or certificate of renewal.

Any member of a domestic mutual life insurance company may vote by proxy, provided the proxy appointment shall be in writing, and shall be filed with the company, and the filing noted in the company's books at least five days before the meeting at which it is to be used. A proxy may be revoked by the member giving it at any time, and no proxy shall be voted when and where the member giving it is present, or is represented by a subsequently appointed proxy.

Sec. 2. This act shall take effect and be in force from and after the first day of July, A. D. 1901.

Approved April 6, 1901.

17135

Supreme Court of the United States.

No. 178.—October Term, 1903.

Samuel Wright and Esdras B. Truby, Appellants, *vs.* The Minnesota Mutual Life Insurance Company et al., Appellees. } Appeal from the Circuit Court of the United States for the District of Minnesota.

[April 4, 1904.]

This case originated in a bill filed in the Circuit Court seeking to declare a dissolution of the insurance company, the sequestration of its assets, and have a receiver appointed with a view to winding up the affairs of the association. On the 6th of August, 1880, an insurance association was organized under the laws of Minnesota, known as the Bankers Association; afterwards, in 1884, its name was changed to the Bankers Life Association of Minnesota. The general purposes of the association were to secure benevolent and fraternal co-operation between its members, and pecuniary assistance to the families of its deceased members and other designated beneficiaries. Its general plan of operation was declared to be to assess and collect from its members and to pay over to the beneficiaries certain stipulated sums, to be secured to them by sufficient pledges of money, which should be kept invested in United States registered bonds. Male persons, not less than eighteen years nor over fifty-five years of age, approved by the medical director, were eligible to membership upon a deposit of as many dollars as such person was years of age, as a part of the "guaranty trust fund," which fund was to be a pledge to secure payment to be made by the association upon the death of members, and was to belong to the association; also a membership fee equal to half the guaranty deposit, and the proportion of the annual expense assessment for the year was required. It was provided:

"Each member of this corporation shall pay thereto, on the last secular day of September, in each year, an assessment equal to fifteen per cent on his contribution to the 'guaranty trust fund,' to meet the operating expenses, and to be known as his 'annual dues'; and upon the death of any member each surviving member shall also pay to said corporation, on demand, an assessment equal to two per cent on his contribution to said 'guaranty trust fund,' and out of this sum, obtained from said last-named assessment, which shall be known as the 'mortuary assessment,' there shall be paid to such beneficiary as is designated in the membership certificate the sum of money in the said certificate named.

"All assessments upon members of this corporation shall be apportioned among all members thereof *pro rata*, that is to say, in proportion to the amount that each member has paid into said guaranty trust fund. All assessments due or to be paid to this corporation shall be paid to such officers or persons and at such places as the said board of trustees shall name and specify. In order to secure prompt payment of all losses occasioned by death of its members and to avoid unreasonable expense incident to the making and collection of assessments and to promote the convenience of all parties, said assessments need not be made on account of such death loss separately, but may be made at stated intervals as said board of trustees may direct, to provide for all or any death losses of said corporation that have taken place prior to the making of any such assessment or assessments. Any assessment for the purpose of paying any death losses shall uniformly be two per cent of each surviving member's contribution to said 'guaranty trust fund' for each such death loss, and in case any such assessment shall produce a gross amount in excess of the amount needed to pay such death losses, then such excess may be used to discharge death losses subsequently occurring."

Article X provides as follows:

"All amounts pledged to this company to secure payments of assessment, occasioned by death of the members shall be used only for that purposes and meanwhile the same shall be and remain invested in United States registered bonds, and shall constitute and be known as 'the guaranty trust fund.' Such bonds shall be made payable to this company and shall be transferable or convertible only upon resolution of its board of trustees, and such board shall have the exclusive charge and control thereof.

"All interest realized from such bonds shall meanwhile be used to defray the company's operating expenses.

"This article shall never be amended, or in any way at all changed, without the consent of every member of this company, to be given in writing signed by him, and filed with the company's secretary, and reciting in full the proposed amendment or change."

It was provided that amounts payable to beneficiaries should be collected by the company from its members, and in case of death or default on the part of any member in payment of his assessments, the association might use his deposit in the guarantee fund to pay death losses in such manner as it might deem best, such use not to work a payment of any assessment as against the defaulting member.

Upon the death of a member the beneficiary was to receive a sum equal to two per cent of the then subsisting guaranty trust fund, not exceeding, however, two thousand dollars upon each full membership, and not exceeding in any case six thousand dollars. Power to amend the articles was vested in the trustees (except as therein otherwise provided), and they were to direct, manage and control the business of the company.

Wright became a member of the company on December 10, 1892, and Truby on March 13, 1893. On December 24, 1898, the board of trustees adopted amended articles of association and by-laws. The amended articles declared that the by-laws shall contain provisions which shall operate to

preserve, continue, guard and protect all of the existing rights and privileges of and promises and pledges to persons who were members at the time the amended articles became operative.

Under the new articles a form of policy was issued, known as the "guaranteed option policy." These policies were issued to new holders, and members under the assessment plan were permitted to transfer their membership so as to receive such policies, which required the payment by the insured of a stipulated annual premium in advance. The premiums were figured upon certain tables of mortality, and approximate those which would have been charged by an old line company on the legal reserve basis. This form of policy contained a condition providing that if the fund derived from such policies shall be reduced below the amount of the reserve, the company may require the insured to pay his just proportion of the deficiency within sixty days after written request therefor; or, at the option of the company, such proportion, with compound interest thereon at the rate of four per cent per annum, may be charged as a lien against the policy and any sum which may become payable thereunder. And in another form of policy it was stipulated that if unexpected losses and expenses shall be found to have reduced the funds derived from such policies below the amount of the reserve, the company shall have the right to apportion the deficiency ratably against it and each similar policy in proportion to its reserve, and the amount so proportioned against each policy to be an indebtedness thereon, bearing interest at four per cent per annum thereon until paid by dividends or otherwise.

Afterwards, at a regular meeting and as provided in the laws of Minnesota, (General Laws of Minnesota of 1901, chapter 143,) the company, on August 5, 1901, accepted the provisions of the statute making the company a regular reserve company, with a policy on which a stated premium is paid and a fixed sum is payable at death to the beneficiaries of the insured. The name of the company was changed to the Minnesota Life Insurance Company.

Section 21 of the act provides, among other things, "Any insurance company, not excepting companies transacting life or casualty business on the mortuary assessment or stipulated premium plan, or either thereof, may qualify and be governed by this chapter, anything in its special charter to the contrary notwithstanding. Provided, that nothing herein contained shall impair or operate to impair the obligation of any contract; and provided further, that after such qualification the company qualifying shall be governed solely by the act; and provided further, that nothing in this act contained shall apply to any town insurance, mortuary assessment, or stipulated premium company, unless and until it shall accept and qualify under the provisions hereof; and provided further, that notice of the acceptance of said act be filed with the insurance commissioner."

Section 1 of the by-laws of the reorganized company provides:

"SEC. 1. To the extent necessary to protect and continue the rights and privileges of any member holding a mortuary assessment certificate, and to preserve and secure the fulfillment of all contract obligations to him, and to continue and perpetuate in the company the power and authority to levy assessments and to do and perform all and everything necessary or expedient to enable it to carry out the mortuary assessment contracts in accordance with the terms thereof and with the law and present by-laws in such case made and provided, the present and existing by-laws shall continue in full force and effect."

A large amount of business has been done on the new plan, and the record discloses that the company has kept its contracts, is solvent, and doing business in many States.

Mr. Justice DAY, after making the foregoing statement, delivered the opinion of the Court.

This is a bill on the part of two dissatisfied holders of certificates, issued while the company was doing business on the assessment plan, to wind up the affairs and distribute the assets of what appears, so far as the record discloses, to be a solvent and prosperous mutual insurance company with which others in interest are apparently satisfied. The Federal right alleged to be invaded, and the one adjudicated upon which ~~is prosecuted~~ a direct appeal from the decree dismissing the bill to this court, is the constitutional guaranty against the impairment of the obligation of a contract contained in section 10 of article I of the Constitution of the United States. The complaining certificate holders allege that the laws of Minnesota, under which the changes in the plan of the insurance business done by the defendant company were made, from the assessment to the legal reserve, flat premium plan of "old line" insurance, work a violation of that provision. As this is the groundwork of the bill in the Federal court, it becomes necessary to make a case duly invoking protection of rights secured by the Federal Constitution. The statute in question expressly provides that it shall not operate to impair the obligation of any contract. In view of the argument that the act must necessarily have that effect, we enquire whether there was a contract with the certificate holders that the plan of insurance should never be changed? It is to be observed that the right of amendment of the articles of asssociation, except in one particular, was reserved in the original articles of association. In article 10 it was provided that the amounts pledged to secure payment of assessments occasioned by the death of members should be used only for that purpose, and the same should remain invested in United States registered bonds. This article, it was expressly provided, should never be amended or in any way changed, without the written consent of every member of the company. It appears that in the changes through which this company has passed

this article has not been amended, and the fund has remained intact for the uses and purposes stated. It is not every change in the charter or articles of associations of a corporation that will work such a departure from the purposes of its creation as to forfeit obligations incurred to it or prevent the carrying on of the modified business. A radical departure affecting substantial rights may release those who had come into the corporation on the basis of its original charter.

There is much discussion in the authorities as to when a charter amendment is of that fundamental character that a majority of the members or stockholders cannot bind the minority by agreeing to a change in the nature of the business to be carried on or the purposes and objects for which the corporation was created. Each case depends upon its own circumstances, and how far the right of amendment has been impliedly or expressly reserved in the creation of corporate rights. It would be unreasonable and oppressive to require a member or stockholder to remain in a corporation whose fundamental purposes have been changed against his will. On the other hand, where the right of amendment is reserved in the statute or articles of association, it is because the right to make changes which the business may require is recognized, and the exercise of the privilege may be vested in the controlling body of the corporation. In such cases, where there is an exercise of the power in good faith, which does not change the essential character of the business, but authorizes its extension upon a modified plan, both reason and authority support the corporation in the exercise of the right. (*Nugent* v. *The Supervisors*, 19 Wall. 241, 251; *Picard et al.* v. *Hughey et al.*, 58 Ohio State, 577; *Miller* v. *Insurance Company*, 92 Tenn. 167–185; *The Supreme Lodge Knights of Pythias* v. *Knight*, 117 Ind. 489.)

In the present case we have by express stipulation the right to amend the articles, with the reservation noted as to article 10. Nor does it appear that the changes were arbitrarily made without good and substantial reason. The testimony in this record discloses that the experience of this assessment insurance company was not anomalous or unusual. It was a case of history repeating itself. Insurance payable from assessments upon members may begin with fine prospects, but the lapse of time, resulting in the maturing of certificates, and the abandonment of the plan for other insurance by the better class of risks, has not infrequently resulted in so increasing assessments and diminishing indemnity as to result in failure. The testimony that such was the history of this enterprise is ample. The changes of 1898 to a plan of issuing, in exchange for certificates and upon new business, a policy having some of the features of old line insurance, seems to have been fully justified by the state of the company's business. And the subsequent change to a policy with straight premiums and fixed indemnity was approved by the majority of the members upon proceedings had under the Minnesota

statute, and has resulted in a successful business and a considerable change of the members to the new and more stable plan. It does not appear that any certificate has been unpaid, nor is any failure shown to levy assessments required under the original articles.

It is doubtless true that the assessments have increased owing to the lesser number subject to assessment and the death of members. What would have been realized from assessments had there been no change of plan is matter of conjecture. The business is still that of mutual insurance, notwithstanding changed methods of operation. The new plan has been legally adopted and approved by the insurance commissioner of the State. The argument for appellants is that, having begun as an assessment company, the plan can never be changed without the consent of all interested. But we have seen that the right of amendment was given in the original articles of association. There was no contract that the plan of insurance should never be changed. On the contrary, it was recognized that amendments might be necessary. There was no vested right to a continuation of a plan of insurance which experience might demonstrate would result disastrously to the company and its members. We are cited to the statutes of many States authorizing similar changes and transfer of membership, but to no case holding legislative authorization of a change of this character to work the impairment by the State of the obligation of a contract.

The courts are slow to interfere with the management of societies, such as this mutual insurance company. While the rights of members will be protected against arbitrary action, such organizations will ordinarily be left to their own methods of action and management. The changes under consideration were made in good faith and have been accepted by many of the old members as well as those who have taken policies since the changes in plan have been made. In our view of the case the law of Minnesota did not impair the obligation of any contract, nor were the changes in the method and plan of this company beyond its corporate powers. There is much testimony in the record as to the good faith of this proceeding and the motives of the complainants in bringing it, which we do not deem it necessary to consider, as the conclusions announced dispose of the case in favor of an affirmance of the judgment.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.